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THE STANDARDS OF QUALITY

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INTRODUCTION: ENSURING QUALITY IN PUBLIC EDUCATION

Excellence in public education has become a top priority for federal, state, and local lawmakers in recent years. The publication of *A Nation At Risk* in April 1983 arguably launched a decade of school reform research and rhetoric as well as specific initiatives. This landmark report of the National Commission on Excellence in Education supported the restructuring of public education "to serve a new breed of students--students in an information age whose lives differed immensely from the lives of youngsters 100 years ago...."¹ Citing alarming dropout rates and increasing numbers of unskilled graduates ill-prepared to enter the workforce, education leaders have urged "systemic change in the way teaching and learning are practiced in the nation's elementary and secondary schools."² Just as the nation's public education system shifted from a rural focus in the late 19th century to address the urban, industrialized society of the 20th century, experts have called for educational standards and school reform that will ensure educational excellence for the 21st century, while recognizing the economic, political, and societal forces affecting any such change.³

Responding to this challenge, states have pursued a variety of routes--choice, school performance assessments, and finance reform. The federal government has traditionally been reluctant to direct this process, acknowledging the states' primary responsibility for the quality of public schools.⁴ Only recently has the concept of national educational standards and goals received serious attention, prompted perhaps in part by public concern regarding quality instruction and curriculum. *America 2000*, released in April 1991, cited increased graduation rates, greater competence in core subjects, excellence in science and mathematics, and adult literacy among its six educational goals for the year 2000. Touted as a "national strategy" rather than a federal program, *America 2000* noted the need for "world class standards" to ensure educational quality and emphasized the ultimate responsibility of states and localities for public education. In autumn 1993, Congress was slated to consider two "Goals 2000" measures that would establish the six national educational goals as federal policy.⁵

Signed into law on March 31, 1994, *Goals 2000: Educate America Act* (H.R. 1804)("Goals 2000" or the "Act"), included prefatory language describing itself as "an act to improve learning and teaching by providing a national framework for education reform...." This preamble also cited the promotion of consensus and "systemic change" necessary "to ensure equitable opportunities and high levels of educational achievement for all students." The introductory language indicated that the statute would also provide a mechanism for the

¹C. Koprowicz, "From Statehouse to Schoolhouse," *State Legislatures* 24, 25 (February 1993) [hereinafter referred to as Koprowicz].

²The Business Roundtable, *Essential Components of a Successful Education System* at 1, 2 (1991).

³Koprowicz, *supra* note 1, at 25.

⁴*Id.* at 26, 27.

⁵U.S. Department of Education, *America 2000: An Education Strategy* at 4, 11, 21, 59 (1991); "Goals 2000 Bills Approach Reform From Different Angles," *Education Daily* (special supplement) (October 6, 1993).

reauthorization of various federal programs and promote the development of a voluntary system of skill standards and certifications.⁶ Comprised of 10 titles, the Act encompassed national reform standards, school safety, parental involvement, and grants for educational improvement at the state and local levels. Also included were provisions addressing such diverse issues as school prayer, environmental smoke, and a midnight basketball league. The final version of *Goals 2000* added professional development programs for teachers and parental participation to the six national goals articulated in *America 2000*.⁷

GOALS 2000: Educate America Act

H.R. 1804, 103d Cong., 2d. Sess., § 102 (1994)

(Pub. L. No. 103-227, 108 Stat. 125)

National Education Goals

By the year 2000:

1. All children will start school ready to learn.
 2. The high school graduation rate will increase to at least 90 percent.
 3. All students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, arts, history and geography....
 4. The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
 5. United States students will be first in the world in mathematics and science achievement.
 6. Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
 7. Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
 8. Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.
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Federal legislation also created the National Council on Education Standards and Testing (NCEST) in 1991 to provide expertise in the development of educational standards, while "respecting state and local control of education."⁸ The accountability of local school

⁶H.R. 1804, 103d Cong., 2d Sess. (1994).

⁷H.R. 1804, 103d Cong., 2d Sess., § 102 (1994).

⁸National Conference of State Legislatures, "Making Educational Reform Happen--Two Essential Elements: Establishing Education Standards and Implementing Appropriate Assessments," Building an Educational Reform Agenda and Engaging the Nation and States (August 1991); see also, P.L. 102-62, 20 U.S.C. § 1221-1, 105 Stat. 314 *et seq.* (1991) (notes). NCEST was to submit its final report to Congress, the

systems for the delivery of education has also received renewed focus, as NCEST endorsed the feasibility of creating national student standards and assessments.⁹ Also furthering national educational goals were grants from the U.S. Department of Education to support the development of standards for mathematics and science.¹⁰

While these efforts and others, such as the 1988 Hawkins-Stafford Elementary and Secondary School Improvement Amendments and the 1990 Excellence in Mathematics, Science, and Engineering Act, may have been indicative of an increasing federal-level commitment to ensuring quality in public education, the establishment of national educational standards remains somewhat controversial.¹¹ The Council for Basic Education, reviewing the 1994 voluntary national history standards developed by the National Center for History in the Schools, noted that national standards offer consistency, academic rigor, and a “balance between shared values and acceptable differences.”¹² In contrast, another source noted that, after the 1995 elections, “the mood was to cut back on national efforts to promote standards development.”¹³ The enactment of *Goals 2000* and congressional reauthorization of the Elementary and Secondary Education Act prompted “significant debates” regarding federal invasion into school curriculum, an area traditionally seen as one within state or local purview.¹⁴

If support for national education standards has waned, interest in state-developed initiatives clearly has not. Data from reports such as the 1996 Third International Mathematics Study (TIMSS), indicating that U.S. student test scores may not compare favorably with those of their international counterparts, and the National Assessment of Educational Progress (NAEP), comparing individual state and overall U.S. educational performance, may continue to spur states’ standards reform efforts.¹⁵ One study suggests that over 30 states have adopted some form of performance-based education; another source notes

Secretary of Education, and the National Education Goals Panel no later than December 31, 1999, and was to cease to exist 90 days after submitting this report.

⁹“School Delivery Standards Poised for Big Comeback,” *Education Daily* at 1, 2 (January 14, 1993).

¹⁰“ED Gives \$17 Million To Foster Math, Science Standards,” *Education Daily* at 1, 2 (October 9, 1992).

¹¹*Id.* at 2; see also, P.L. 100-297, 20 U.S.C. § 2701, 102 Stat. 130 *et seq.* (1988); P.L. 101-589, 20 U.S.C. §§ 5301, 5311 (1990); P.L. 102-103, 20 U.S.C. §§ 5381, 5411 (1991). Sections 5301, 5311, and 5381 were repealed in 1994 by Pub.L. 103-382, Title III, § 391(1), 108 Stat. 4023.

¹²Council for Basic Education, *Special Report*, “History in the Making: An Independent Review of the Voluntary National History Standards” at 1 (January 1996).

¹³Education Commission of the States, *Cross-Cutting Issues of Standards-Based Education Reform: A Report of a Standards Workshop* 1 (April 1996)[hereinafter referred to as *Cross-Cutting*].

¹⁴D. Massell, Consortium for Policy Research in Education, *Policy Briefs*, “Persistence and Change: Standards-Based Systemic Reform in Nine States” 1 (March 1997).

¹⁵U.S. Department of Education, National Center for Education Statistics, *Pursuing Excellence: A Study of U.S. Eighth-Grade Mathematics and Science Teaching, Learning, Curriculum, and Achievement in International Context (Initial Findings from the Third International Mathematics and Science Study)* at 9 (November 1996); U.S. Department of Education, National Center for Education Statistics, *Linking the National Assessment of Educational Progress (NAEP) and The Third International Mathematics and Science Study (TIMSS): A Technical Report* (Introduction), <<http://nces.ed.gov/pubs98/linking/index.html>>(last modified August 1998).

that all states except Iowa had created or were developing content standards.¹⁶ Recognizing the need for standards-based reform at the state level was the National Governors' Education Summit, which stressed in March 1996 the need to "advance standards and assessment efforts in every state."¹⁷ While some states have adopted broad educational goals and objectives, leaving localities greater discretion, others have prescribed more specific initiatives. Linking all these reform efforts, however, is the necessary determination of "what students come to know and are able to do because of their education."¹⁸ Standards-based reform efforts may incorporate not only content and performance goals, but also assessments, accountability, teacher preparation, and adequate resources.¹⁹

QUALITY EDUCATION FOR VIRGINIA: A CONSTITUTIONAL PRIORITY

THE DEVELOPMENT OF PUBLIC SCHOOLS IN THE COMMONWEALTH

Educational standards were virtually nonexistent in colonial Virginia, although the period was characterized by a "universal belief in the importance of education, and in the need of some form of education--not necessarily literary--for all people." The Commonwealth's educational system generally mirrored the practice of rural England. Private tutorial instruction was the norm among the wealthy, while apprenticeships and "charity" schools provided occupational training for working class, orphaned, or illegitimate children. Education statutes in 17th century Virginia recognized the obligation of the church to "examine, catechise and instruct the youth and ignorant persons" as well as the authority of counties and parishes to establish "workhouse" schools for "instructing poor children in the knowledge of spinning, weaving, and other useful occupations and trades." Colonial governors were directed to "certify" schoolmasters. The development of old field schools--elementary or ungraded private schools typically housed in abandoned fields--in the late 17th through the mid-19th centuries reflected the Commonwealth's scattered population.²⁰

The legislature authorized the first "free" or public school in Virginia in 1643. Endowed through the will of a planter, the Symms School offered free tuition to children in Elizabeth City County. Similarly endowed was the Eaton Free School, also located in Elizabeth City County.²¹ Thomas Jefferson's 1779 "Bill for the More General Diffusion of Knowledge" directed the establishment of local school districts offering three years' free tuition for boys and girls. Although the measure failed, a subsequent bill, approved in 1796,

¹⁶A. Medler, Education Commission of the States, *Examples and Summaries of State Initiatives to Develop Goals, Standards and Outcomes* at 1 (May 1994)[hereinafter referred to as *Examples*]; A. Lewis, "Of Rhetoric and Standards," *Phi Delta Kappan* 332 (January 1996); see also, C. Piphio, "The Standards Parade," *Phi Delta Kappan* 655 (June 1996).

¹⁷Education Commission of the States, *Standards & Education: A Roadmap for State Policymakers* 1(March 1996)[hereinafter referred to as *Roadmap*]; see also, *Cross-Cutting*, *supra* note 13, at 1.

¹⁸*Examples*, *supra* note 16, at 1 (May 1994); see also, *Roadmap*, *supra*, at 6-7.

¹⁹*Roadmap*, *supra* note 17, at 24.

²⁰P. Monroe, *Founding of the American Public School System* at 67, 61, 53, 57, 60 (1940) [hereinafter referred to as Monroe]; see also, Virginia Department of Education, "...A Certain Degree of Instruction" at 3, 4 (1977) [hereinafter referred to as Degree].

²¹Monroe, *supra* note 20, at 65.

left the creation of public schools to local initiative. The Virginia Constitutions of 1776 and 1830 were silent as to education; the 1851 Constitution, however, did provide for a capitation tax that might be applied to education in "primary and free schools."²²

PROVIDING QUALITY PUBLIC EDUCATION FOR ALL

It was not until 1870 that public education in Virginia became a constitutional priority. Article VIII, § 1 of the Constitution of 1870 directed the Superintendent of Public Instruction to develop a plan for a "uniform system of public schools"; the General Assembly was to provide for the implementation of this public school system throughout Virginia by 1876. Arguably the first "standards" for public schools appeared in this document, as its provisions addressed teacher training, textbooks, and the authority of the General Assembly to prescribe necessary laws governing this public school system. The Commonwealth's commitment to public education was clarified in 1902, as the General Assembly was constitutionally directed to "establish and maintain an efficient system of public free schools."²³ In 1904, the Board of Education established minimum requirements for instruction and teacher qualifications. Also evidencing an increasing commitment to quality education were the publication of a course of study for elementary schools in 1907, the creation of a high school accreditation program in 1913, and the passage of the first compulsory attendance laws in 1922. By 1945, the Board of Education had adopted regulations addressing the development of a 12-year public school system in all localities.²⁴

The Commonwealth's constitutional duty to provide an "efficient" system of public schools produced mixed interpretations following the 1954 decision of the United States Supreme Court in *Brown v. Board of Education*. The 1902 constitutional mandate had been construed to support massive resistance as well as the closure of public schools in Prince Edward County.²⁵ Resulting perhaps in part from these events, the 1960s were characterized by extensive focus on Virginia's public school system--by the Spong Commission in 1960, and subsequently by various initiatives addressing improvements in public education, such as the designation of a portion of sales tax revenues for public schools in 1966 and the appointment of special committees in 1967 to recommend a plan for enhancing public education and standards for accrediting elementary schools.²⁶

²²A.E. Dick Howard, *Commentaries on the Constitution of Virginia* at 879-881 (1974) [hereinafter referred to as Howard]; see also, Monroe, *supra* note 20, at 202.

²³Howard, *supra* note 22, at 882, 903.

²⁴Degree, *supra* note 20, at 6-8.

²⁵Howard, *supra* note 22, at 883, 890-895; see also, Hullihen W. Moore, "In Aid of Public Education: An Analysis of the Education Article of the Virginia Constitution of 1971," 5 *U. Rich. L. Rev.* 263 at 266, 267 (1971).

²⁶Degree, *supra* note 20, at 9.

A MANDATE FOR STANDARDS: THE VIRGINIA CONSTITUTION OF 1971

Appointed in 1968, the Commission on Constitutional Revision clearly recognized "the importance of constitutional protections for public schools...."²⁷ The Commission's recommendations, revised and adopted by the General Assembly and approved by voters in 1970, granted education clear constitutional status. The framers of Virginia's new Constitution agreed that the Commonwealth's responsibility for public education should be strengthened, acknowledging in the Bill of Rights the Jeffersonian ideal:

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.²⁸

Ultimate responsibility for public education would rest with the General Assembly, specifically charged in Article VIII, § 1 with the duties of not only establishing a public school system but also striving to ensure its quality:

The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth and shall seek to ensure that an educational program of high quality is established and continually maintained.

Described as "the fulcrum of the mechanism whereby quality education is to be achieved,"²⁹ Article VIII, § 2 set forth for the first time a constitutional mandate for standards for quality in public education. The framers determined that while placing detailed standards in the Constitution would be inappropriate, neither should their development be left to judicial construction.³⁰ The final version of the new section directed the Board of Education to establish standards of quality, while granting the General Assembly the dual responsibilities of revising and funding these standards:

Standards of quality for the several school divisions shall be determined and prescribed from time to time by the Board of Education, subject to revision only by the General Assembly....The General Assembly shall determine the manner in which funds are to be provided for the cost of maintaining an educational program meeting the prescribed standards of quality....

Assisting in the implementation of these new educational standards was Article VIII, § 5, which directed the Board of Education to identify to the Governor and the General Assembly

²⁷*Report of the Commission on Constitutional Revision* at 254 (January 1969) [hereinafter referred to as *Constitutional Revision*].

²⁸Va. Constitution, Art. I, § 15 (1971); see also, *Constitutional Revision*, *supra* note 27, at 20, 255-256.

²⁹Howard, *supra* note 22, at 903.

³⁰*Constitutional Revision*, *supra* note 27, at 260.

those school divisions "which have failed to establish and maintain schools meeting the prescribed standards of quality."

The new Education article was hailed as one of the "central accomplishments" of the 1971 revisions, establishing education as a basic value in the Commonwealth. Scholars have noted that "there is no object of government which Virginians would see as more fundamental and of more continuing concern than education."³¹ Today, all states, with the exception of Mississippi, have some constitutional authority for the establishment of a public school system. These constitutional clauses may range in leniency from a simple mandate for free public schools, prevalent in 15 states, to the requirement in 19 states for a minimum standard of quality, most often that a school system be "thorough" or "efficient." Eight states have included an enhanced educational standard, while seven state constitutions have designated education as the most important duty of the state.³²

THE STANDARDS OF QUALITY: A CHRONOLOGY

Responding to the constitutional directive, the Board of Education adopted the first Standards of Quality (SOQ) on August 7, 1971; these Standards were revised and enacted by the 1972 Session of the General Assembly. The 1972 Standards focused on three major concerns: personnel, program, and planning and management standards. Accompanying this initial enactment were performance and planning "objectives" for local divisions that cited graduation rates, student achievement goals, and classroom management. Eight "simplified" standards were enacted in 1974, setting pupil-teacher ratios, requiring special, gifted, and vocational education programs, and mandating the provision of kindergarten in the public schools by 1976. Again, separate performance objectives were adopted, this time in the form of a joint resolution.³³

Further evidencing the Commonwealth's increasing commitment to these new Standards were a variety of legislative and agency studies addressing pupil achievement and testing, teacher evaluations, and topics of instruction. Funding of the Standards of Quality has also received repeated focus in the last two decades.³⁴ In 1984, the Governor's Commission

³¹Howard, *supra* note 22, at 884, n. 42, 885-886.

³²W. Thro, "The Third Wave: The Impact of the Montana, Kentucky, and Texas Decisions on the Future of Public School Finance Reform Litigation," 19 *Journal of Law & Education* 219 at 229, 243-248 (1990).

³³Report of the Joint House-Senate Subcommittee to Review the Standards of Quality in Education, *House Document No. 19* at 1 (1976) [hereinafter referred to as *House Document No. 19*]; 1972 Acts of Assembly, c. 732; 1974 Acts of Assembly, c. 316; House Joint Resolution No. 161 (1974).

³⁴Report of the Commission Created to Study the Formula for State Aid to Public Schools, *House Document No. 20* (1970); Study of Criteria and Tests for Measuring Pupil Performance in Virginia Schools, *House Document No. 10* (1974) [hereinafter referred to as *House Document No. 10*]; Study of Teacher Evaluation in Virginia's Public Schools, *House Document No. 9*, (1974); Report of the Joint Subcommittee Studying Minimum Competency Testing, *House Document No. 25* (1981) [hereinafter referred to as *House Document No. 25*]; Report of the Joint Legislative Audit and Review Commission on Funding the Standards of Quality Part 1: Assessing SOQ Costs, *Senate Document No. 20* (1986); Report of the Joint Legislative Audit and Review Commission on Funding the Standards of Quality Part 2: SOQ Costs and Distribution, *Senate*

on Virginia's Future cited the need for equal access to appropriate education. Noting that the Standards of Quality establish the "groundwork" for educational excellence by establishing minimum requirements for quality public education, the 1986 Governor's Commission on Excellence in Education offered additional recommendations to bolster the public school system. In 1990, the 21- member Commission on Educational Opportunity for All Virginians was created pursuant to Executive Order No. 4 to advise the Governor and the General Assembly on "how the Commonwealth could further address and overcome differences in educational programs in Virginia's public schools...." The Commission's 1991 report cited the widespread practice among school divisions of exceeding these Standards and suggested that the Standards might require further revision.³⁵

The Attorney General has indicated that the Standards "define the right to an education guaranteed by the Constitution of Virginia" and that the Standards are "intertwined with, but cannot be overshadowed by, the appropriations process."³⁶ Further, neither the Legislature nor the Board of Education is permitted to delegate their respective responsibilities for the SOQ to the Superintendent of Public Instruction or to any other entity; revisions to the Standards should apply "uniformly to all school divisions in the Commonwealth."³⁷

RECENT DEVELOPMENTS

The Standards of Quality continue to receive close scrutiny, as the "complex societal problems" facing public schools have prompted education leaders to urge "fundamental and systemic changes in public education." Supported by the Department of Education and the Governor, a proposed "World Class Education Program" sought to redefine standards for public education in the Commonwealth over the next three biennia. Described as a "long-range program of research, experimentation, and evaluation of results," this initiative combines identified student goals or "competencies"; a Common Core of Learning reflecting international standards; assessment and accountability for student achievement; and research to provide Virginia students with the skills necessary to compete in the 21st century workforce.³⁸

A draft of the Common Core of Learning, the center of the World Class Education initiative, was released to educators throughout Virginia in fall 1992. The Common Core did

Document No. 25 (1988); Report of the Commission to Study Efficiency in the Use of Public Education Funds, *Senate Document No. 39* (1990).

³⁵The Report of the Governor's Commission on Excellence in Education, *Excellence in Education: A Plan for Virginia's Future* at 17, 20 (October 1986) [hereinafter referred to as *Excellence in Education*]; Governor's Commission on Educational Opportunity for All Virginians, *Final Report* at 25, 31 (August 1991).

³⁶1991 Op. Va. Att. Gen. 45.

³⁷1991 Op. Va. Att. Gen. 154.

³⁸Virginia Department of Education, *A World Class System of Education: What It Means for Virginia* (1991); see also, Governor's Plan to Improve Educational Opportunities for All Virginians at 2, 3 (January 8, 1992) [hereinafter referred to as Governor's Plan]; Virginia Department of Education, *Superintendent's Annual Report for Virginia 1990-91* at iii (1992).

not prescribe curriculum, but rather focused on higher-order thinking and problem-solving, written and oral communications, and other basic knowledge and skills" to be acquired by Virginia pupils by age 16.³⁹ Although slated for approval for early childhood education by 1996 and for higher grades in 1998, the Common Core was criticized by many who suggested further review and research in school reform. In September 1993, then-Governor Wilder directed the Department of Education to withdraw the proposed Common Core.⁴⁰

Meeting the constitutional mandate of maintaining a public school system of high quality has necessarily included striving to achieve educational quality throughout the Commonwealth. Concerns regarding equity in public education were expressed by the 1984 Governor's Commission on Virginia's Future; in 1986, the Governor's Commission on Excellence in Education cited disparity in the quality and scope of educational programs as a major obstacle to educational excellence in the Commonwealth. In 1990, the 21-member Commission on Educational Opportunity for All Virginians was created pursuant to Executive Order No. 4 to advise the Governor and the General Assembly on "how the Commonwealth could further address and overcome differences in educational programs in Virginia's public schools...." Focusing on program, pupil, and fiscal equity, the Commission's report offered 27 recommendations, including revisions to the Standards of Quality clarifying student performance standards and outlining a common core curriculum as well as refinement of the composite index.⁴¹ The Commonwealth's commitment to addressing equity concerns continued in 1991 with the creation of a special legislative commission to review the recommendations of the Governor's Commission.⁴²

These efforts, however, did not preclude the filing of a lawsuit in late 1991 by the Coalition for Equity in Educational Funding, comprised of 31 school divisions, to "enforce provisions of the Virginia Constitution to provide an equitable system of education for all elementary and secondary education students throughout Virginia." To grant the Legislature and the Governor the opportunity to address these issues in the 1992 Session, the Coalition declined to serve the suit and ultimately withdrew its case, citing the "strong commitment" of the legislative commission to address the equity issue.⁴³ Then-Governor Wilder presented a six-year Plan to Improve Educational Opportunities for All Virginians to the General Assembly in January 1992, offering short- and long-term strategies to address "programmatic aspects of the disparity issue."⁴⁴ The legislative commission reviewing the recommendations of the Governor's Commission became the 16-member Commission on Equity in Public

³⁹J.P. Jones, "The Common Core of Learning Advances World Class Education," *Richmond Times-Dispatch* A 11 (December 23, 1992); Virginia Department of Education, "Common Core Draft Released," *State Ed* (November 23, 1992) [hereinafter referred to as *State Ed*].

⁴⁰R. Holland, "Outcome-Based Education Seeks to Mold the New Virginia Child," *Richmond Times-Dispatch* A 11 (January 27, 1993); R. Holland, "Look Inside Common Core: Less a New Paradigm than Old Pablum," *Richmond Times-Dispatch* A 11 (December 23, 1993); *State Ed*, *supra* note 39; "Wilder scuttles outcome-based education plan," *Richmond Times-Dispatch* 1 (September 16, 1993).

⁴¹Governor's Commission on Educational Opportunity for All Virginians, *Summary Report* at 1, 2, 4, 7, 11, 17-23 (February 1, 1991).

⁴²Senate Joint Resolution No. 251 (1991).

⁴³Division of Legislative Services, *1992 Session Summary & Review* at 52, 53 (1992).

⁴⁴Governor's Plan, *supra* note 38.

Education, a legislative agency, in 1992, and was charged with reviewing the recommendations of the Governor's Commission, as well as any resulting reports and plans from the Board of Education and the Governor, and with submitting its own recommendations to the Governor and the 1993 Session.⁴⁵

The Coalition refiled its suit in June 1992, representing 11 public school students and seven local school boards. In November 1992, the Circuit Court of the City of Richmond sustained the Commonwealth's request for a demurrer, stating that "the Virginia Constitution, while establishing education as a fundamental right, does not as written make equalized funding on the part of the Commonwealth a constitutional right."⁴⁶ The Coalition's appeal of this ruling was awarded on October 12, 1993.⁴⁷ On April 15, 1994, the Virginia Supreme Court ruled in favor of the Commonwealth in *Scott v. Commonwealth*. Although recognizing education as a fundamental right and noting increasing disparities in state and local funding for public education, the Court stated that neither Section 1 nor Section 2 of Article VIII required "substantial equality" in spending or programs among public schools. The plaintiffs had not contended that their respective educational programs failed to meet the Standards of Quality, and the Court concluded that "while the elimination of substantial disparity between school divisions maybe a worthy goal, it simply is not required by the Constitution."⁴⁸

Generating the opportunity to obtain federal funds in support of the national educational goals as well as controversy over the appropriate roles of federal, state, and local government in Virginia's public schools was the 1994 passage of *Goals 2000*. Funds provided for state and local education systemic improvement (Title III) would be used initially for the development of a statewide education improvement plan by a state panel comprised of appointees by the Governor and chief state school officer. Applications for these funds were to be made by the state educational agency ("SEA"), defined by cross-reference to the Elementary and Secondary Education Act of 1965 as the "State board of education or other agency or officer primarily responsible for the State supervision of public elementary or secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or state law."⁴⁹

In a 1994 opinion recognizing the Board of Education as the "appropriate" entity to serve as the SEA for *Goals 2000* purposes, the Attorney General noted that the Board, under the then-current appropriation act and relevant Code provisions, could only seek *Goals 2000* funds "in coordination with the Governor, and subject to his authority under § 2.1-38.2 and the appropriation act."⁵⁰ Citing concerns that the *Goals 2000* initiative would grant "a new and unprecedented level of potential federal intrusion into State and local responsibility for

⁴⁵Va. Code § 9-310 (1997); The Commission's July 1, 1998, expiration date was extended by the 1998 Session of the General Assembly for an additional year. 1998 Acts of Assembly, c. 50.

⁴⁶*Scott v. Commonwealth*, No. HC-77-1 (Cir. Ct. Va. Nov. 20, 1992).

⁴⁷"High Court Petitioned on School Financing," *Richmond Times-Dispatch* B-1 (April 3, 1993); *Scott v. Commonwealth* Petition for Appeal (April 1, 1993); *Scott v. Commonwealth* (Rec. No. 930473, Circuit Court No. CH92C00577/93H-875) Award and Certificate of Appeal (October 13, 1993).

⁴⁸*Scott v. Commonwealth*, 247 Va. 379, 443 S.E.2d 138 (1994).

⁴⁹H.R. 1804, 103d Cong., 2d Sess., § 3 (1994). See also, 1994 Va. Op. Att. Gen. 15 at 19 (June 20, 1994).

⁵⁰1994 Va. Op. Att. Gen. 15 at 20 (June 20, 1994).

and control over public education,” then-Governor Allen indicated in correspondence to the President of the Board of Education that he would not act favorably on a Goals 2000 application request, but also directed the Superintendent of Public Instruction to seek an extension of the June 30 deadline from the U.S. Department of Education. The Board of Education subsequently voted, 4-3, to apply for funding in May 1995. The Superintendent’s request to extend the application deadline was denied by the U.S. Secretary of Education on June 14, 1995.⁵¹

The 1996-98 biennial budget re-visited *Goals 2000* funding by directing the Superintendent of Public Instruction, upon the passage by 85 or more school boards of resolutions requesting such action, to seek, on behalf of these school boards, “federal funds as specified by the local resolution which are, or may become available pursuant to federal legislation to support local school division efforts in the areas of teacher training, curriculum development and the purchase of instructional materials related to implementing the Standards of Learning.” The budget language also designated the Superintendent as the SEA for the purpose of soliciting these funds.⁵²

The Governor vetoed the budget language, noting his policy objections as well as advice from the Attorney General that the item was “an unconstitutional delegation of power expressly granted to the Board of Education, the Governor, and the General Assembly.” Despite failure of the House of Delegates to override this line-item veto, 57-43, in April, by May 22, 1996, the school boards of 93 localities had adopted *Goals 2000* resolutions.⁵³ Congressional amendments adopted in spring 1996 would have allowed local school boards to apply directly to the U.S. Department of Education for these funds, upon the approval of the SEA, prompting further review by the Governor, the State Board, and Superintendent.⁵⁴

The General Assembly again considered Virginia’s potential participation in *Goals 2000* in the 1997 Session. Although legislation designating the Board of Education as SEA for purposes of applying for and accepting federal education funds and grants, except as may be otherwise provided by law, and authorizing it to approve applications for *Goals 2000* funds by local school boards without gubernatorial approval failed, amendments to the 1996-98 biennial budget included a total of \$14.9 million in nongeneral funds to reflect *Goals 2000*

⁵¹Senate Finance Committee Staff, *A Summary of Goals 2000 and the Status of Virginia’s Participation* 1-2; 16-17 (June 26, 1995).

⁵²1996 Acts of Assembly, c. 912, § 1-51, Item 131 I.

⁵³Communication from Governor George Allen to the House of Delegates regarding line-item vetoes in HB 30 (April 10, 1996); Legislative Information System, *Bill Tracking, 1996 Session (HB 30)* <<http://leg1.state.va.is/cgi-bin/legp504?ses=961&typ=bil&val=hb30>>; Virginia Department of Education, *Goals 2000 Resolutions as of May 22, 1996*.

⁵⁴Division of Legislative Services, *1997 Session Summary* at 69 (1997); Correspondence from Governor Allen to the State Board of Education, May 7, 1996; Correspondence of Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education, to Superintendent of Public Instruction William C. Boshier, Jr., May 7, 1996; Correspondence of Superintendent of Public Instruction William C. Boshier, Jr. to Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education, May 9, 1996; Correspondence of Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education, to Superintendent of Public Instruction William C. Boshier, Jr., May 15, 1996.

moneys. Governor Allen had requested the Board on January 10, 1997, to apply for Goals 2000 funding for “the sole purpose of purchasing classroom computers and related technology,” noting that, in accepting these federal funds, the Commonwealth would not be required to “modify our Standards of Learning, assessments, accountability, curricula, local control or other aspects of our Virginia education reforms.”⁵⁵ The 1998 Session appropriated an estimated \$8,684,679 in each year of the 1998-2000 biennial budget from nongeneral fund dollars obtained through Goals 2000.⁵⁶

The 1995 revisions of the Standards of Learning (SOL) for the four core subject areas of English, mathematics, science, and history and social studies in 1995 and the subsequent revision of the Standards of Accreditation (discussed below) foreshadowed and shaped a number of executive and legislative branch initiatives addressing educational standards and accountability. The 1996 Governor’s Commission on Champion Schools recommended, among other things, defining the “essential academic content standards of knowledge and skills” within the four subject areas, testing student achievement in the development of such knowledge and skills, reporting school performance, and creating a “system of accountability and accreditation based on student academic achievement....”⁵⁷ Reflecting the national movement toward standards-based education reform was the 1996 Commission on Accountability for Educational Excellence (HJR 168), which was charged to develop a “comprehensive plan for the accreditation of public schools which incorporates the revised standards of learning....”⁵⁸ The work of this Commission was folded into that of the Commission on the Future of Public Education (HJR 196) in 1997. This latter Commission, also created in 1996, had been directed to develop a “vision for public education consistent with the General Assembly’s constitutional mission and a strategic plan for accomplishing the vision.” Included among its 45 recommendations to the 1998 Session of the General Assembly were initiatives designed to ensure “rigorous instruction for collegiate and workforce preparation,” improve the capacity of schools and educators to deliver quality instruction, increase community and private sector involvement in public education, and enhance accountability for academic performance.⁵⁹

THE CURRENT STANDARDS OF QUALITY

Repeatedly described as the “foundation” of educational policy for the Commonwealth’s public schools, the Standards of Quality set forth broad policies and goals rather than detailed procedures. The Standards establish minimum educational goals and requirements; localities may, and often do, surpass these Standards.⁶⁰ Typically revised

⁵⁵Division of Legislative Services, *1997 Session Summary*, HB 2325, at 69 (1997); House Appropriations Committee and Senate Finance Committee Staffs, *Summary of 1997 Budget Actions* at 29 (March 5, 1997); Remarks by Governor George Allen, *Announcement on Goals 2000* (January 10, 1997).

⁵⁶1998 Acts of Assembly, Special Session I, c. 1, § 1-52, Item 138 C (11)(g).

⁵⁷*Final Report of the Governor’s Commission on Champion Schools* at 22 (January 1996).

⁵⁸Report of the Commission on Accountability for Educational Excellence, *House Document No. 88* (1997)[hereinafter referred to as *House Document No. 88*].

⁵⁹House Joint Resolution No. 516 (1997); Report of the Commission on the Future of Public Education (HJR 196), *Blueprint for Educational Excellence*, *House Document No. 48* at ix-xiii (1998).

⁶⁰*House Document No. 19*, *supra* note 33, at 4, 6.

concurrently with the development of the biennial budget to ensure appropriate funding for required initiatives, the Standards were initially adopted as uncoded acts of the General Assembly. The Standards were codified in Title 22.1 in 1984, perhaps reflecting the legislature's commitment to the constitutional mandate for a public school system of high quality.⁶¹

An uncoded preamble to the Standards enacted in 1992 expressed the sense of the General Assembly and the Board of Education that "all children can be successful learners" and that learning is a function of "student characteristics and circumstances, such as motivation, ability, and adult support, as well as the resources necessary to create a productive learning environment." Recognizing the shared responsibility of the Commonwealth, local school boards, parents, educators, and the community for a productive learning environment, this introductory language also clarified the Commonwealth's duty to "develop and implement a world class system of education which ensures excellence and equity for all students."⁶²

STANDARD ONE: BASIC SKILLS, SELECTED PROGRAMS, AND INSTRUCTIONAL PERSONNEL

The lengthiest and most detailed of the Standards of Quality, Standard 1 provides the primary requirements for meeting the constitutional mandate for quality public education. Aspirational language similar to that contained in the 1992 preamble confirms that the "fundamental goal" of public schools must be to foster the development of skills necessary for success in school and preparation for life, and that quality education is contingent upon not only the commitment of adequate resources but also the provision of a working environment, salaries, and benefits to "ensure the availability of high quality instructional personnel...."⁶³

The Standards of Learning

Standard 1 directs the Board of Education to establish educational objectives to implement the development of necessary skills. These objectives, known as the Standards of Learning, are not considered "regulations" for the purposes of the Administrative Process Act, but are nonetheless subject to a notice and hearing procedure to ensure "reasonable opportunity" for public comment prior to the adoption of any revisions. Thirty days' written notice of hearings on any revision of these educational objectives must be provided for school boards and persons requesting to be notified.⁶⁴

The Standards of Learning program can be traced to an objective adopted by the Board of Education in June, 1981; statutory authority clarified this objective in 1986. The Standards of Learning were designed to "identify what students are expected to accomplish, to provide a method of determining what has been learned, and encourage teachers to place

⁶¹1984 Acts of Assembly, cc. 713, 735.

⁶²1992 Acts of Assembly, c. 591.

⁶³Va. Code § 22.1-253.13:1 A (1999 Supp.).

⁶⁴Va. Code § 22.1-253.13:1 B (1999 Supp.).

emphasis on critical areas in the curriculum."⁶⁵ Standards of Learning have since been developed for English, mathematics, science, social studies, health (including driver education), physical education, music, art, foreign language, and family life education. Organized in a variety of formats, the standards typically include goals and learning objectives, crafted for various grade levels.⁶⁶

Revising the SOL

Alluding to the World Class Education initiative, subsection B of § 22.1-253.13:1 directed the Board to "seek to ensure" that any revisions to the Standards of Learning are "consistent with the world's highest educational standards," but clearly prohibited the implementation of any revisions before July 1, 1994. The revised objectives were to include basic skills of communication, computation, and critical reasoning as well as the development of various personal qualities and attitudes. Local school boards would be required to implement educational objectives that meet or exceed these revised standards. The subsection includes expectations of student mastery of the educational objectives and provides for the assessment of the achievement of these objectives, subject to available funding.⁶⁷ As recommended by the Commission on the Future of Public Education in 1998, the assessments are to evaluate not only application of knowledge but also "critical thinking...and skills related to the Standards of Learning being assessed." Assisted by independent testing experts, the Board is to conduct a "regular analysis and validation" of these assessments.⁶⁸

Consistent with this statutory directive, the Board of Education developed and adopted in June 1995, revised Standards of Learning in the core subject areas of mathematics, science, English, and history and social science. The result of an "unprecedented partnership of educators and citizens," the new SOL were crafted to "set reasonable targets and expectations for what teachers need to teach and students need to learn" and to provide "greater accountability on the part of the public schools . . . [while giving] the local school boards the autonomy and flexibility they need to offer programs that best meet the educational needs of students." In addition, the new SOL included computer/technology standards within each of the four subjects for the ends of grades five and eight.⁶⁹

The Department of Education has coordinated efforts of school divisions to realign curricula consistent with the new SOL through regional consortia, workshops, summer institutes and seminars for teachers at all levels in the four subject areas; in addition, videotapes and curriculum models have been distributed statewide.⁷⁰ These new SOL are to

⁶⁵Virginia Department of Education, *Standards of Learning Objectives for Virginia's Public Schools: Physical Education* at i (1984); Virginia Department of Education, *Standards of Learning Objectives for Virginia's Public Schools: Mathematics* at v (1988); 1986 Acts of Assembly, c. 555.

⁶⁶Virginia Board of Education, *Standards of Learning for Virginia's Public Schools* (June 1995) [hereinafter referred to as *Standards of Learning*].

⁶⁷Va. Code § 22.1-253.13:1 B (1997 and 1998 Supp.).

⁶⁸Va. Code § 22.1-253.13:1 B (1999 Supp.); 1998 Acts of Assembly, c. 902.

⁶⁹Va. Code § 22.1-253.13:1 B (1999 Supp.); *Standards of Learning*, *supra* note 66, at iii; see also, *House Document No. 88*, *supra* note 58, at 12-13.

⁷⁰*House Document No. 88*, *supra* note 58, at 13.

be integrated into the competencies for vocational education programs, subject to available funding. In addition, occupational vocational programs are to be aligned with industry and professional standard certifications. The Standards of Learning for all subjects—not just the four core areas revised in 1995—are to undergo regular review and revision “to maintain rigor and to reflect a balance between content knowledge and the application of knowledge in preparation for eventual employment and lifelong learning.”⁷¹

Supplementing, but not included within, the mathematics SOL in 1999 will be Board-developed objectives at the secondary school level addressing “personal living and finances”; the objectives will require instruction in checkbook and debt management, loan application processes, insurance, and other personal business and financial management concerns. The Board will not be required to evaluate student achievement in these objectives in the SOL Assessments.⁷²

The 1998-2000 biennial budget included over \$25 million for the “implementation and evaluation of comprehensive teacher training programs” at the local level in the four core subjects as well as leadership training for principals and superintendents in implementing the SOLs “with the goal of ensuring student success on the Standards of Learning tests.” To receive this funding, school divisions were to submit, for Department of Education approval, local plans for training programs that assist teachers, principals, and superintendents in facilitating the implementation of the SOL, including interpretation of test data and technology applications, and that emphasize the use of technology as an instructional tool. School divisions must also agree to participate in “monitoring and evaluation activities” coordinated by the Department of Education. The Department was to assist school divisions in plan development, and school divisions were urged to collaborate with institutions of higher education and other school divisions in creating their training plans.⁷³

Instructional Programs

Responsibility for the development and implementation of instructional programs lies with local school boards. Instruction for grades K through 12 must emphasize specific subjects and skills, such as reading, writing, speaking, mathematics, technological proficiency, science, history, government, economics, foreign languages, international cultures, health, environmental issues, and geography to facilitate “responsible participation in American society and in the international community....” The arts, both fine and practical, must also be included. Finally, instructional programs must focus on the knowledge and skills necessary to qualify for further education, employment, training, and “lifelong learning.”⁷⁴ Supplementing the subject areas enumerated in Standard 1 are the provisions of § 22.1-200, which specifies those subjects to be taught in the elementary grades; § 22.1-201 requires the study of certain historic documents within Virginia and United States history.⁷⁵

⁷¹Va. Code § 22.1-253.13:1 B (1999 Supp.); 1998 Acts of Assembly, c. 902.

⁷²Va. Code § 22.1-253.13:1 B (1999 Supp.); 1998 Acts of Assembly, c. 800.

⁷³1999 Acts of Assembly, c. 935, § 1-52, Item 138 (C)(6).

⁷⁴Va. Code § 22.1-253.13:1 C (1999 Supp.).

⁷⁵Va. Code §§ 22.1-200; 22.1-201 (1997 and 1999 Supp.).

Remediation, Prevention, and Intervention

Standard 1 includes specific directives to address the special needs of various student populations. Local school boards must develop and implement prevention, intervention, or remediation programs for students who are educationally at-risk—including, but not limited to, those who have failed the literacy tests, those whose scores are in the bottom quartile on the Virginia State Assessment Program Tests, and those who do not achieve a passing score on any SOL test in grades three, five, and eight. The programs may include summer school for all elementary and middle school grades and for all high school academic courses, as defined by Board regulations. Remediation programs are also to include, as appropriate, procedures for the early identification of students at-risk of failing the literacy tests or the SOL assessments in grades three, five, and eight. These identified students are also to be provided appropriate remediation activities.⁷⁶

Legislation adopted in 1998 directed the Board of Education, following the 1998 and 1999 administration of the SOL assessments, to ascertain “the degree to which the current funding mechanisms are sufficient to address the remedial needs of those students failing such SOL assessments.” The Board is to provide interim and final reports and recommendations to the Governor and the chairmen of the House Committees on Appropriations and Education and the Senate Committees on Finance and Education and Health, “to ensure access to remedial services for those students failing the SOL assessments.”⁷⁷

Students who do not pass the literacy tests or all SOL tests in grades three, five, and eight or whose scores are in the bottom quartile on the Virginia State Assessment Program Tests must participate in some sort of prevention, intervention, or remediation initiative. If the division superintendent determines that a student’s promotion or improving his poor academic performance, literacy test scores, or SOL test scores in grades three, five, and eight is “directly related” to attendance in remedial summer school or other form of remediation, the superintendent may enforce this attendance, after reasonable efforts to obtain the student’s attendance and parental notification, through the Commonwealth’s compulsory school attendance laws.

Standards of Learning: Excerpts

English: Grade Eleven--Reading/Literature

“11.3 The student will read and analyze relationships among American literature, history, and culture.

- Describe contributions of different cultures to the development of American literature.
- Describe the development of American literature in the 17th, 18th, 19th, and 20th centuries.
- Contrast periods in American literature.
- Differentiate among archetypal characters in American literature.
- Describe the major themes in American literature.

⁷⁶Va. Code § 22.1-253.13:1 C (1999 Supp.).

⁷⁷1998 Acts of Assembly, cc. 602, 627, cl.5.

- Describe how use of context and language structures conveys an author’s point of view in contemporary and historical essays, speeches, and critical reviews.”

Mathematics: Grade Six—Computation and Estimation

“6.6 The student will

- solve problems that involve addition, subtraction, and/or multiplication with fractions and mixed numbers, with and without regrouping, that include like and unlike denominators of 12 or less and express their answers in simplest form; and
- find the quotient, given a dividend expressed as a decimal through thousandths and a divisor expressed as a decimal to thousandths with exactly one non-zero digit. For divisors with more than one non-zero digit, estimation and calculators will be used.”

Science: Grade Two—Matter

“2.3 The student will investigate and understand basic properties of solids, liquids, and gases. Key concepts include

- mass and volume; and
- processes involved with changes in matter from one state to another (condensation, evaporation, melting, freezing, expanding, and contracting).”

History and Social Sciences: Grade Eight—World History to 1000 A.D.

“8.2 The student will compare selected ancient river civilizations, including Egypt, Mesopotamia, the Indus Valley, and Shang China, and other ancient civilizations (such as the Hebrew and Phoenician kingdoms and the Persian Empire) in terms of

- location in time and place;
- the development of social, political, and economic patterns;
- the development of religious traditions; and
- the development of language and writing.”

Computer/Technology Standards by the End of Grade Five

“C/T5.2 The student will develop basic technology skills.

- Develop a basic technology vocabulary that includes cursor, software, memory, disk drive, hard drive, and CD-ROM.
- Select and use technology appropriate to tasks.
- Develop basic keyboarding skills.
- Operate peripheral devices.
- Apply technologies to strategies for problem solving and critical thinking.”

Source: Virginia Board of Education, *Standards of Learning for Virginia Public Schools* (June 1995).

Attendance in a program of prevention, intervention or remediation selected by the pupil’s parent that is either conducted by an accredited private school or is a special program deemed by the division superintendent as comparable to the public school program may satisfy a remediation requirement. The costs of any private school or other special remediation initiative are borne by the parents; however, no tuition is charged for public school summer courses when attendance is required. Additional state funds may be provided for the public school programs based on the number of students attending and the state share for per pupil costs.⁷⁸

⁷⁸Va. Code §§ 22.1-253.13:1 C, F; 22.1-254; 22.1-254.01 (1999 Supp.).

It is the school division that selects the form of the required remediation for students failing the literacy tests or the specified SOL tests; the remediation is to be “appropriate to the academic needs of the student.” Consistent with the recommendations of the HJR 84 Joint Subcommittee Studying Remedial Summer School Programs, the 1997 Session of the General Assembly amended Standard 1 to provide state funding for public school remediation programs for students who do not pass the literacy tests, beginning with the 1997-1998 fiscal year. Amendments adopted in 1998 added funding for students who do not pass all Standards of Learning assessments in grades three, five, and eight beginning with the 1998-99 fiscal year. Also recommended by the HJR 84 Joint Subcommittee and adopted by the 1997 Session were amendments authorizing local school boards to establish remediation program standards committees, which may include the superintendent, a teacher, a parent, and community member, to recommend remediation program components and to evaluate program success.⁷⁹

Local school boards identify at-risk students for remediation program funding purposes on the basis of State Board criteria. These criteria, although not regulations for the purposes of the Administrative Process Act, are nonetheless subject to a modified public notice and hearing process to ensure “appropriate opportunity for input from the general public, teachers, and local school boards....” State funding, as provided in the appropriation act, supports full-time equivalent instructional positions for each 1,000 students in grades K through 12 estimated to score in the bottom national quartile on Virginia State Assessment Program Tests and those who fail the literacy tests or SOL assessments for grades three, five, and eight. These funds may also be used to support programs for educationally at-risk students as identified by the local school boards.⁸⁰

Standard 1 also directs the Board of Education to establish standards for full funding of summer remedial programs. The standards are to include, but are not limited to, minimum instructional hours (or the equivalent) required for full funding and an annual assessment of program effectiveness. Based on student attendance and the Commonwealth's share of per pupil instructional costs, state funds were to be provided for the full cost of summer and other remediation programs complying with Board standards, pursuant to the appropriation act. The Board is also statutorily directed to promulgate regulations creating standards for remediation programs; these standards are to require schools to evaluate their programs based on pass rates for the SOL tests.⁸¹

Targeting new options and instructional approaches for remediation is the Virginia Innovative Remedial Education Pilot Program, a grants initiative created in 1997 to support up to 10 pilot projects addressing not only the remediation of at-risk students, those failing the

⁷⁹Va. Code § 22.1-253.13:1 C (1999 Supp.); 1997 Acts of Assembly, cc. 466, 828; 1998 Acts of Assembly, c. 902.

⁸⁰Va. Code § 22.1-253.13:1 F (1999 Supp.); 1999 Acts of Assembly, c. 935, § 1-52, Item 138(C)(8)(a). Language in the 1999 Appropriation Act does not mention those students failing the SOL assessments in grades three, five, and eight.

⁸¹Va. Code §§ 22.1-199.2; 22.1-253.13:1 C (1999 Supp.).

literacy or specified SOL tests, and those identified for remediation pursuant to Standard 1, but also “barriers to effective remediation of students with academic deficiencies.”⁸²

Other Programs

Acknowledging the significance of positive initial learning experiences, Standard 1 also requires school boards to implement programs for grades K through 3 that emphasize “developmentally appropriate learning to enhance success.” Dropout prevention is also a priority; school divisions are to include programs on prevention, intervention, or retrieval designed to increase the number of students earning a high school diploma or general education development (GED) certificate. The statute requires state funding, in addition to basic aid, to support dropout prevention initiatives “grounded in sound educational policy.”⁸³ The 1998-2000 biennial budget authorized over \$10 million in each year for dropout prevention, and includes funding for a statewide dropout prevention initiative as well as pilot projects.⁸⁴ In 1996, the General Assembly adopted a “no-loss” funding provision, subject to appropriated funds, to “hold all local school divisions harmless” by maintaining the level of each school division's funding as allocated for drop-out prevention programs on July 1, 1996, if the funding would be less than its funding for these programs in fiscal year 1995. The Board was also directed to create and implement a funding mechanism “to ensure that no school board is penalized in its state funding for drop-out prevention programs for reducing the drop out rate in its school division.”⁸⁵

Consistent with the prevention initiatives required by Standard 1 is the Advancement Via Individual Determination (AVID) Program, created in 1994 to supplement the modified Virginia Guaranteed Assistance Program (VGAP). Local school boards may adopt AVID initiatives to “prepare at-risk students enrolled in the secondary grades in the public schools...for post-secondary education eligibility.” Supported by general fund dollars and a required local match computed on the basis of the composite index of local ability-to-pay, AVID programs must include a variety of components, such as the identification at-risk students who demonstrate academic potential and the desire to attend college, appropriate staff development, and a curriculum incorporating “intensive, accelerated instruction....”⁸⁶

Effective preparation for further education and the workforce is also incorporated in the Standards of Quality. Local school boards are to implement “academic and vocational preparation for students who plan to continue their education beyond secondary school or who plan to enter employment.” Career education programs are to be “infused” throughout the K through 12 curricula. These programs are to promote knowledge of all types of careers and employment, emphasizing the value of completing school. Career exploration

⁸²Va. Code § 22.1-209.1:4 (1999 Supp.).

⁸³Va. Code § 22.1-253.13:1 D (1999 Supp.).

⁸⁴1999 Acts of Assembly, c. 935, § 1-52, Item 136 (H)(1),(2); *see also*, Va. Code §§ 22.1-209.1:1 (1997); 1996 Acts of Assembly, c. 522.

⁸⁵Va. Code § 22.1-253.13:1 D 2 (1999 Supp.); 1996 Acts of Assembly, c. 522.

⁸⁶Va. Code § 22.1-209.1:3; 1994 Acts of Assembly, cc. 789, 864; 1999 Acts of Assembly, c. 935, § 1-52, Item 136 (H)(3).

opportunities may be included in the middle school grades. Competency-based vocational educational programs, career guidance, and employment counseling for secondary school students must also be offered in each school division. Echoing this requirement are the provisions of § 22.1-209, directing school boards to provide free employment counseling and placement services for secondary school students.⁸⁷

Providing educational opportunities for special students is also a statutory requirement. Students with disabilities must be identified and enrolled in "appropriate instructional programs consistent with state and federal law"; gifted students must be identified and provided "appropriately differentiated instructional programs." School boards must also provide "educational alternatives" for those students whose needs are not met elsewhere in the Standards. Adult education for individuals functioning below the high school completion level must be provided, either by the school board or collaboratively by the school board and other agencies. Finally, each school board must implement a plan to make the educational achievement of at-risk students a "divisionwide priority."⁸⁸

Instructional Personnel

To ensure appropriate instructional staffing levels, Standard 1 requires the employment of a minimum number of licensed, full-time instructional personnel specified in the Appropriation Act for each 1,000 pupils in average daily membership (ADM). Calculations for kindergarten positions are based on full-day kindergartens; school divisions offering half-day kindergarten programs are to adjust the average daily membership to reflect 85 percent of their total kindergarten ADM, as provided in the appropriation act. The 1999-2000 budget designates the following positions per 1,000 pupils in average daily membership:

Basic Aid: 51 professional instructional positions and aide positions

Gifted Education: 1 professional instructional position

Occupational-Vocational and Special Education: 6 professional instructional and aide positions

Remedial Education: 9 professional instructional positions per 1,000 pupils scoring in bottom national quartile of Virginia State Assessment Program tests or failing literacy tests or SOL Assessments for grades three, five, and eight.

While state and local funds must support the basic, special, gifted, and vocational education positions, only state funding is statutorily required for the remedial program positions.⁸⁹

⁸⁷Va. Code §§ 22.1-253.13:1 D; 22.1-209 (1999 Supp.).

⁸⁸Va. Code § 22.1-253.13:1 D 6-10 (1999 Supp.).

⁸⁹Va. Code § 22.1-253.13:1 E, F (1999 Supp.); 1999 Acts of Assembly, c. 994, § 1-52, Item 138(B)(6).

The 1999 budget language does not reference remedial education instructional personnel for students failing the SOL tests, but refers instead to the "state's Literacy tests."

Pupil-Teacher Ratios

Standard 1 articulates clear limits for pupil-teacher classroom ratios. Designed to achieve divisionwide ratios of students in ADM to full-time instructional personnel, these ratios do not include special education teachers, principals, assistant principals, counselors, and librarians.⁹⁰

Class Size and Pupil-Teacher Ratios: Standard 1

Grade	Maximum Class Size	Maximum Pupil-Teacher Ratio
kindergarten	30; if ADM > 25, full-time aide required (effective July 1, 2000: 29; if ADM > 24, full-time aide required)	25 to 1 (effective July 1, 2000: 24 to 1)
1	30	24 to 1
2-3	30	25 to 1 (effective July 1, 2000: 24 to 1)
4-6	35	25 to 1
English class, 6-12	none	24 to 1
middle and high schools	none	25 to 1

Source: Va. Code § 22.1-253.13:1 G (1999 Supp.).

In 1996-97, pupil-teacher ratios in grades 8 through 12 across the Commonwealth ranged from 6.9 in Alexandria to 16.7 in Amherst County; the state average was 12.2. Similarly, pupil-teacher ratios in grades K through 7 varied from 9.0 in the Town of West Point to 18.5 in the City of Salem, with a state average of 14.2. Nationally, pupil-teacher ratios for 1998 were projected to be 18.9 and 14.7 for public elementary and secondary grades, respectively.⁹¹

A voluntary class size reduction initiative, enacted in 1994, authorizes local school boards to implement in kindergarten through third grade, within certain schools, lower ratios of students in average daily membership by assigning instructional personnel in a manner that produces ratios of students in average daily membership to full-time equivalent teaching

⁹⁰Va. Code § 22.1-253.13:1 G (1999 Supp.).

⁹¹Virginia Board of Education, *Report on Public Education, 1998 Annual Report*, Table 2, "Ratio of Pupils to Classroom Teaching Positions, Regular Day School; Ratio of Pupils to Instructional Personnel K-6, Grade 1 and English Classes Grades 6-12, 1996 - 1997" (1998)[hereinafter referred to as *1998 Annual Report*];

U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 1998*, (Table 65) at 75 (table prepared July 1998)< <http://nces.ed.gov/pubs99/1999036.pdf>> . According to the Virginia Department of Education, because resource teachers are not specifically excluded from these calculations, some Virginia school divisions may include these instructors in their reported pupil-teacher ratios.

positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, in ratios of 18:1 and 20:1 in schools having high concentrations of at-risk students and in schools having moderate concentrations of at-risk students, respectively. The 1998-2000 budget provides about \$159 million as an incentive for reducing K-3 class sizes, in varying levels, based on each school's percentage of students eligible for the free lunch program; local matches are required, based on the composite index of local ability-to-pay.

Voluntary Class Size Reduction Initiative

Qualifying School % of Students Approved Eligible for Free Lunch	Grades K-3 School Ratio	Individual Class Size
Up to 16 %	24 to 1	29
16% but < 30%	20 to 1	25
30% but < 45%	19 to 1	24
45% but < 55%	18 to 1	23
55% but < 65%	17 to 1	22
65% but < 70%	16 to 1	21
70% but < 75%	15 to 1	20
75% or more	14 to 1	19

Source: 1998 Acts of Assembly, c. 464, § 1-52, Item 138 (C) (10).

The Standard also imposes an annual reporting requirement for local school boards. Two sets of ratios must be reported: one reflecting only those elementary school teachers—by school—who teach the grade and class on a full-time basis for the then-current school year, excluding resource personnel, the other set of ratios including resource teachers. Any classes funded through the voluntary kindergarten through third grade at-risk student/lower ratio program, as well as those classes having waivers to exceed ratios and class size, are to be identified as such classes. While the reports identify schools, all teacher and pupil identities remain confidential.⁹²

Also instituting voluntary class size reductions, although not directly amending the SOQ, was the Omnibus Educational Act of 1995. The Act establishes, among other things, the “long-term goal of reducing pupil-teacher ratios and class sizes for grades K through 3 in those schools in the Commonwealth with high or moderate concentrations of at-risk students.” Supported by budget language, the Act provides that localities are to supply matching funds for these voluntary initiatives based on the composite index of ability-to-pay. The Act also targets educational technology, at-risk four- and five-year-olds, and block grants for certain educational programs. Finally, the Act permits school boards, using state and local dollars as provided in the appropriation act, to reduce elementary school pupil-teacher ratios and class sizes by hiring classroom teachers, remedial teachers, and reading specialists beyond those required by the SOQ.⁹³

⁹²Va. Code § 22.1-253.13:1 G; 1994 Acts of Assembly, cc. 618, 790; 1998 Acts of Assembly, c. 464, § 1-52, Item 138 (C)(10).

⁹³Va. Code § 22.1-199.1 (1999 Supp.).

The calculation of average daily membership was addressed in 1997, as the General Assembly amended Standard 1 to include in ADM on a pro rata basis students who are either enrolled in a nonpublic school or receiving home instruction, and who are enrolled in public school on a less than full-time basis in any mathematics, science, English, history, social science, vocational education, fine arts, or foreign language course. Reiterating the statutory directive that the pro rata calculations not exceed one-half a student, the 1998-2000 budget counts each course as 0.25, capping the per student calculation at 0.5.⁹⁴

STANDARD 2: SUPPORT SERVICES

Acknowledging the importance of support services in ensuring quality public education, Standard 2 requires local school boards to provide support services that are "necessary for the efficient and cost-effective operation" of the public schools. Among these services are administration, instructional support, pupil personnel services, student attendance and health, management information systems, and building operation and maintenance. Specifically noted are pupil personnel services for grades K through 12 to assist students in "educational, social and career development." The Department of Education, in turn, must provide technical assistance to school divisions in the delivery of these administrative and support services; this assistance may include in-service staff training, the development of facility plans, equipment specifications, and other services.⁹⁵

These support services are funded through the appropriation act from basic school aid funds on the basis of prevailing statewide costs. According to the 1998-2000 biennial budget, the basic operation cost for each school division is to include general administration, operation and maintenance of school plant, and professional and staff improvement.⁹⁶ In 1995-96, over \$1 billion in state and local funds supported administration, attendance and health, operation and maintenance, and pupil services.⁹⁷

⁹⁴Va. Code § 22.1-253.13:1 H (1999 Supp.); 1997 Acts of Assembly, c. 829; 1998 Acts of Assembly, c. 464, § 1-52, Item 138 A (1)(c). House Joint Resolution No. 164 (1996) would have established a nine-member joint subcommittee to study the "efficacy and appropriateness of authorizing part-time public school attendance or participation in extracurricular activities for nonpublic school students." The joint subcommittee was directed to examine a variety of issues, including residency or attendance zone requirements; application and equitable selection processes; compliance by nonpublic school students with all relevant public school policies; access of these students to services such as transportation and ancillary services; academic and other relevant eligibility requirements; and fiscal and policy implications of authorizing such selective or part-time attendance or participation. Although House Committee on Rules did not report the resolution, it agreed that the House Committee on Education should examine the issues raised by HJR 164 and recommend "appropriate action as it may deem necessary." Consistent with this directive, Delegate J. Paul Council, chairman, House Committee on Education, appointed a special subcommittee to review the issues cited in the resolution.

⁹⁵Va. Code § 22.1-253.13:2 (1997).

⁹⁶1998 Acts of Assembly, c. 464, § 1-52, Item 135(A)(3).

⁹⁷*Superintendent's Annual Report*, *supra* note 91, at 33-34.

STANDARD 3: ACCREDITATION, OTHER STANDARDS AND EVALUATION

The accountability of schools and school boards for quality education is highlighted in Standard 3, which directs the Board of Education to promulgate regulations pursuant to the Administrative Process Act establishing standards for the accreditation of public schools. Further clarifying the Board's authority to provide for the accreditation of public elementary, middle, and secondary schools is § 22.1-19, which also permits the Board to provide for the accreditation of private schools, "taking reasonably into account the special circumstances and factors affecting such private schools," and for certain child day care centers. Accreditation standards for public schools must include student outcome measures, requirements and guidelines for instructional programs, staffing levels, pupil personnel services, special education program standards, auxiliary programs such as library and media services, community relations, and graduation requirements, as well as "the philosophy, goals, and objectives of public education in Virginia."⁹⁸

The Standards of Accreditation

Cited in the initial Standards of Quality, the Standards of Accreditation (SOA) are "designed to ensure that an effective educational program is established and maintained in Virginia's public schools." The Board of Education has crafted these standards not only to provide an essential foundation for high quality educational programs, but also to foster public confidence, encourage continuous improvement in public schools, assure recognition by other learning institutions, and to provide a means of assessing school effectiveness.⁹⁹

The Standards of Accreditation are organized in eight parts, addressing broad areas, such as school and community communications, instructional programs and leadership, student achievement, school facilities and safety, accreditation, and goals and objectives. Acknowledging that the "mission of the public education system, first and foremost, is to educate students in the essential academic knowledge and skills in order that they may be equipped for citizenship, work, and a private life that is informed and free," the SOA also include mandates for course offerings, standard school year and day, and staff levels and responsibilities. The accreditation status of each public school is subject to annual review by the Board.¹⁰⁰

The 1997 revisions to the SOA set forth new criteria and processes for individual school accreditation, and clearly state that school accreditation shall be based "primarily" on pupil achievement, as evidenced by scores on the Standards of Learning tests and other assessments. In the elementary grades, accreditation will be based on the percentage of eligible students in grades three and five achieving passing scores on the SOL tests in the four core subject areas; in middle schools, SOL tests in the four core subjects for eighth graders and end-of-course tests "where applicable" will determine accreditation. End-of-course SOL test scores will support secondary school accreditation. The SOA define "eligible students,"

⁹⁸Va. Code §§ 22.1-253.13:3 A, B; 22.1-19 (1997 and 1999 Supp.).

⁹⁹8 VAC 20-131-10 (1997); 1972 Acts of Assembly, c. 732.

¹⁰⁰8 VAC 20-131-10 *et seq.* (1997); Va. Code § 22.1-253.13:3 B (1999 Supp.).

for accreditation purposes, as the total number of students enrolled in the school at the grade level for the SOL tests, with the exception of those pupils whose individualized education plan (IEP), 504 Plan, or limited English proficiency (LEP) committee excludes them from test participation. Beginning with academic year 2001-02, the achievement of students who do not participate in the SOL tests will be evaluated on the basis of an alternative assessment prescribed by the Board.¹⁰¹

While test scores are deemed a “primary” consideration in school evaluation and accreditation, the SOA contemplate some flexibility, as individual schools’ annual improvement toward specified passing rates during the initial years of the implementation will be “considered.” In addition, “additional accommodations” may be afforded those schools with high percentages of transient or non-English-speaking immigrant pupils.¹⁰²

The SOA delineate four accreditation categories: Fully Accredited, Provisionally Accredited, Accredited with a Warning, and Accreditation Denied. In phasing in these classifications, the SOA require each new or existing school to document compliance with graduation, instructional programs, leadership and staffing, and facilities and safety requirements. After meeting these “pre-accreditation” criteria, schools may be assigned one of the four ratings. All schools were to be rated Provisionally Accredited as of July 1, 1998; however, new schools are awarded the status of “conditionally accredited” pending an evaluation of school performance and satisfaction of the pre-accreditation requirements.¹⁰³

The principal of each public school, through the division superintendent, must submit school pre-accreditation eligibility reports to the Department of Education. The principal and the division superintendent must also report to the Department any action taken on any advisements or warnings from the previous year. Individual schools are to develop and implement biennial school plans consistent with the relevant division’s six-year plan. With local school board approval, schools seeking to implement innovative or experimental programs not consistent with the SOA or other Board regulations may seek a Board waiver from compliance from those regulations not mandated by state or federal law or addressing health and safety; the waivers may be granted for a period of up to five years. In no case, however, will the SOA addressing student achievement expectations, graduation, instructional programs, and accreditation be waived, nor would any initiative violating the SOQ be approved.¹⁰⁴

¹⁰¹ Va. Code § 22.1-253.13:3 B (1999 Supp.); 8 VAC 20-131-280 A, C; 8 VAC 20-131-30 (1997).

¹⁰² 8 VAC 20-131-280 C (1997).

¹⁰³ 8 VAC 20-131-280 D; 8 VAC 20-131-300 (1997).

¹⁰⁴ 8 VAC 20-131-290 (1997).

The Standards of Accreditation--1997

(excerpts)

Part I: Purpose. “The standards for accreditation of public schools in Virginia are designed to ensure that an effective educational program is established and maintained in Virginia's public schools.”

Part II: Philosophy, Goals, and Objectives. "Each school shall have current philosophy, goals and objectives that shall serve as the basis for all policies and practices...."

Part III: Student Achievement. "Each student should learn the relevant grade level subject matter before promotion to the next grade...."

Part IV: School Instructional Program. "Each school shall provide a program of instruction that promotes academic achievement in the essential academic disciplines and shall provide additional instructional opportunities that meet the abilities, interests, and educational needs of students."

Part V: School and Instructional Leadership. "The principal shall be responsible for instructional leadership and effective school management that promotes positive student achievement, a safe and secure environment in which to teach and learn, and efficient use of resources."

Part VI: School Facilities and Safety. “Each school shall be maintained in a manner ensuring compliance with the Uniform Statewide Building Code and regulations of the Board of Education pertaining to facilities.”

Part VII: School and Community Communications. "Each school shall promote communication and foster mutual understanding with parents and the community.”

Part VIII: School Accreditation. "Schools shall be accredited based, primarily, on achievement of the criteria established in 8 VAC 20-131-30...."

Source: 8 VAC 20-131-10 et seq. (1997).

To achieve full accreditation, schools must meet (i) the pre-accreditation requirements and (ii) prescribed student pass rates on the SOL tests in the four core disciplines. Provisional accreditation, a classification that will no longer exist at the end of the 2002-03 school year, will be granted when the requirements for full accreditation are not met, but the school demonstrates annual improvement in the SOL tests pass rates. The “accredited with a warning” designation is assigned to those schools that neither achieve full or provisional accreditation. Granted priority for Department of Education technical assistance, these schools must develop corrective action plans to improve SOL test scores over a two-year period. They are to “document to their community” that appropriate instruction or

remediation and additional instructional time is being provided to students failing the Literacy Passport Tests or not garnering a “proficient” rating on the SOL tests. The Board of Education will set minimum annual improvement levels for “warned” schools. No school may remain in the “warning” category for more than three consecutive years.¹⁰⁵ Finally, accreditation is denied when a school fails to achieve full accreditation and, after three years of warning status and despite corrective action, fails to meet specified achievement levels. The SOA are silent, however, as to the ramifications and effect of denial of accreditation.¹⁰⁶

Student Performance on Standards of Learning Tests—Full Accreditation
(Required Percentages of Students Passing SOL Tests)

	English	Mathematics	Science	History
Grade 3	70%	70%	50%	50%
Grade 5	70%	70%	70%	70%
Grade 8	70%	70%	70%	70%
Secondary grades	70%	70%	70%	70%

Source: 8 VAC 20-131-300 D(1997).

Apart from the waivers granted in the pre-accreditation process, the Standards of Accreditation permit waivers from compliance upon request of the division superintendent and the school board chairman. No waivers are granted for those regulations addressing student achievement—those affecting graduation requirements, Literacy Passport Testing, and SOL tests.¹⁰⁷

Consistent with the procedures required by Executive Order 25 (98) and the Administrative Process Act, the Board of Education authorized the submission of a notice of intended regulatory action (NOIRA) at its February 25, 1999, meeting to “promulgate regulations to define consequences and rewards for public school accountability.”¹⁰⁸ At its annual retreat in April 1999, the Board considered accountability measures in other states as well as potential rewards and consequences within the school accreditation process. Public hearings were held in six cities in May 1999, as the Board indicated its intention to develop regulations that “will address what assistance will be available to schools that are unable to meet the accountability requirements under the SOA.” A second round of hearings is contemplated upon the Board’s release of draft proposals for these rewards and consequences.¹⁰⁹

¹⁰⁵Va. Code § 22.1-253.13:3 D (1999 Supp.); 8 VAC 20-131-300; 8 VAC 20-131-310, 8 VAC 20-131-340 D, E (1997).

¹⁰⁶8 VAC 20-131-300 D 4 (1997).

¹⁰⁷8 VAC 20-131-330 (1997).

¹⁰⁸Virginia Department of Education, Board of Education Agenda Item D, February 25, 1999, meeting.

¹⁰⁹Virginia Department of Education, Press Release, “State Board of Education Announces Initial Schedule for Development of Accountability Measures” (March 24, 1999)

<<http://141.104.22.210/VDOE/NewHome/pressreleases/mar2499.html>>; Virginia Department of Education, Public Notice, “State Board of Education Seeking Public Comment on Strategies for School that Meet, or Fail to Meet, Expectations for Student Achievement” (April 26, 1999).

The Outcome Accountability Project: Measuring School Performance

Central to the Standards of Accreditation is accountability for educational excellence. A critical component of this accountability is the assessment of the effectiveness of the public schools and student academic progress. Pursuant to subsection D of Standard 3, the Superintendent of Public Instruction is responsible for the development of "criteria for determining and recognizing educational performance in the Commonwealth's public school divisions and schools." Subject to the approval of the Board, these criteria are to become "an integral part of the accreditation process" and must include student outcome measurements. Supplanting the Educational Performance Recognition (EPR) Program, the Outcome Accountability Project (OAP) provides annual reports of student performance data as a tool for improving public education in Virginia. The OAP uses "outcome indicators," such as course enrollments, attendance, and dropout rates, that target seven educational objectives:

1. Preparing students for college;
2. Preparing students for work;
3. Increasing the graduation rate;
4. Increasing special education students' living skills and opportunities;
5. Educating elementary school students;
6. Educating middle school students; and
7. Educating secondary school students.

While all seven objectives are reported at the division level, data for the last three objectives is reported for individual schools. Accountability for performance as measured by the OAP is clearly authorized by Standard 3. The Superintendent of Public Instruction is to identify those school divisions not meeting performance criteria and assist these divisions in the implementation of action plans to improve the achievement levels of those schools or divisions failing to meet these criteria. This identification is to include not only an "analysis of the strengths and weaknesses of public education programs in the various school divisions" but also recommendations to the General Assembly for "further enhancing student learning uniformly across the Commonwealth."

Because the performance criteria contemplated in Standard 3 have not yet been established, OAP reports are presently used for informational purposes only. Once these performance criteria are created, it is anticipated that the OAP will expand its function to incorporate determinations of accountability.¹¹⁰ According to the Strategic Plan for the Board of Education and the Superintendent of Public Instruction, the OAP was to be refined further as a "report card" to "enhance public awareness of ...schools' and students' performance; foster a cooperative effort among schools, parents, and business and community leaders to

¹¹⁰Appalachia Educational Laboratory, "Accountability: Student Performance is the Bottom Line," *Policy Briefs* at 3, 4 (1992); Virginia Department of Education, *1998 Interpretive Guide to Reports* at 1-3 (1998) [hereinafter referred to as *1998 Interpretive Guide*]; Virginia Department of Education, *1998 Virginia Summary Report* (1998) [hereinafter referred to as *Summary Report*]; Va. Code § 22.1-253.13:3 D (1999 Supp.).

strive toward higher academic achievement on the part of students; and generally promote the public's involvement and confidence in its system of public education."¹¹¹

Consistent with the Strategic Plan and as required by the Standards of Accreditation, the first School Performance Report Card was issued in spring 1999. Provided to parents of schoolchildren and the community at large, the School Performance Report Card includes not only school-wide test scores on the SOL tests, but statewide and division averages for the most recent three-year period; student attendance rates; incidents of physical violence and weapon possession occurring at school; and the accreditation rating awarded to the school for the current and previous three years. In addition, secondary schools are to report the number and percentage of students taking Advanced Placement (AP) courses and the number and percentage of those earning a score of 3 or better on AP tests; the number and percentage of students taking college-level courses and the number and percentage of those students passing at least one such course; the number of Standard, Advanced Studies, Special and International Baccalaureate Diplomas, as well as Certificates of Program Completion and GED certificates; and dropout rates for the current and previous three years. Legislation adopted in 1999 incorporated these performance indicators in Standard 3 of the SOQ, as the Board of Education, in setting criteria for recognizing educational performance of school divisions, is to include consideration of special school division accomplishments, such as numbers of dual enrollments and students in advanced placement (AP) and International Baccalaureate courses, and participation in academic year Governor's Schools.¹¹²

Testing: Measuring Pupil Performance

Measuring student performance assists not only in individual student evaluation, but also in the discovery of special skills and aptitudes and in determinations of the effectiveness of instructional programs. In the last quarter century, assessing student progress has received repeated focus in Virginia. A 1973 legislative study committee was directed to develop "a set of criteria and reasonable tests and standards to measure a child's level of performance." Pupil performance testing and criteria received legislative scrutiny in 1974; a 1976 joint subcommittee reviewing the SOQ recommended the increased use of criterion-referenced tests to assess educational progress and needs. Minimum competency testing for graduation was reviewed in 1981.¹¹³

Today, student testing in Virginia combines a variety of assessment instruments. Standardized or "norm-referenced" tests attempt to measure general ability or achievement; these tests do not assess progress toward particular educational goals or objectives. Although

¹¹¹Virginia Department of Education, *Strategic Plan for the Board of Education and the Superintendent of Public Instruction; 1994 Through the Year 2000 and Beyond* at 5, 7-8
<http://141.104.22.210/VDOE/Publications/St_App/stratpl.html>

¹¹²Virginia Department of Education, *Virginia School Report Cards Spring 1999*
<<http://141.104.22.210/html/reportcard.shtml>>; 8 VAC 20-131-270 (1997); Va. Code § 22.1-253.13:3 (1999 Supp.); 1999 Acts of Assembly, c. 670 (HB 2077).

¹¹³*House Document No. 10, supra* note 34; *House Document No. 19, supra* note 33; *House Document No. 25, supra* note 34.

considered effective in comparing achievement levels in a geographic area with those of national samples, these tests generally do not predict future academic success or indicate effective instruction. In contrast, criterion-referenced tests target the achievement of specific educational objectives and are not designed to provide comparative performance data. Teacher-made tests may provide guidance in improving instruction and in motivating pupils. Informal evaluations, typically based upon observation of students, also offer a useful evaluation tool.¹¹⁴

The use of tests to assess student progress is also authorized by Standard 3. The Board of Education is to develop "appropriate assessments" which may include criterion-referenced tests as well as "alternative assessment instruments." In addition, the Board is directed to prescribe measures, including nationally-normed tests, for the Virginia State Assessment Program, which, from 1987-1996 incorporated the Iowa Tests of Basic Skills for grades four and eight and Tests of Achievement and Proficiency for grade 11. In 1996, the Board of Education shifted its standardized tests to the Stanford Achievement Tests Series, Ninth Edition (Stanford 9) for students in grades three, five, eight, and eleven.¹¹⁵ Literacy tests in reading, writing, and mathematics are to be provided for sixth graders. Complementing the Board's testing responsibilities is the duty of local school boards to require the administration of "appropriate assessments," including the Virginia State Assessment Program, the Virginia Literacy Testing Program, the Standards of Learning Assessments, and the National Assessment of Educational Progress state-by-state assessment. Analysis and annual reporting of Virginia State Assessment and Virginia Literacy Testing Program results are also local school board responsibilities. Finally, local school boards must provide in-service training for teachers and principals in the preparation of test materials and methods of assessing student progress.¹¹⁶

The revised Standards of Learning in the core subjects of English, mathematics, science, and social studies prompted a more than \$12 million appropriation in the 1996-1998 biennial budget for the development and administration of new assessment materials and tests. In April 1996, the Board of Education announced policy decisions directing the development of the new state testing program. Tests would measure skills and competencies in the four revised SOL subject areas at grades 3, 5, 8, and 11. In May 1996, the Department, on behalf of the Board, issued a request for proposals seeking vendors for the development of the new SOL tests and nationally norm-referenced tests.

On October 10, 1996, the Board of Education named Harcourt Brace Educational Measurement as the vendor for a proposed contract for the creation of tests reflecting the new Standards of Learning and for the norm-referenced portion of the new testing program, which would compare the academic performance of Virginia students to national norms. One test will be developed for the four SOL areas of English, history, mathematics, and science in grade 3; two tests will be developed for grade 5--one for the SOL four areas and another

¹¹⁴House Document No. 10, *supra* note 34, at 1-8.

¹¹⁵Va. Code § 22.1-253.13:3 E (1999 Supp.); *Superintendent's Annual Report*, *supra* note 91, at 10-17; *1998 Interpretive Guide*, *supra* note 110, at 3; *1998 Summary Report*, *supra* note 110, at 1.

¹¹⁶Va. Code § 22.1-253.13:3 E, G, H (1999 Supp.).

knowledge-based test on technology. There would be no fifth grade writing assessment. Testing for grade 8 would include four separate SOL subject area tests as well as a separate knowledge-based technology test. At grade 11, two tests each would be created for the SOL areas of English, mathematics, and science, with separate scores reported for each, and a single test for the history and geography component of the SOL.

Data generated from the initial administration of the new SOL tests in spring 1997 would be used only to determine test validity and reliability; the data could not be used to impose consequences on schools, school divisions, teachers or students. Norm-referenced tests were also administered in spring 1997. Content review committees were expected to work with the contractor to ensure that testing items appropriately reflect the new SOL. In addition, a technical advisory panel, an assessment policy advisory committee, and standard-setting committees on cut-scores would also be involved in the test development process.

The SOL tests were operational in spring 1998, with public reporting of test results expected following this second test administration. The 28-member Standard Setting Advisory Committee, appointed in the summer of 1998, is to ensure that “the standard setting procedures...are educationally sound and appropriate for use in recommending passing scores for the SOL testing program...”¹¹⁷ Supporting the SSAC were eight Standard Setting Committees, each comprised of approximately 20 educators and curriculum experts, representing a “balance of geographic distribution, ethnicity and race, and knowledge of the grades and content areas to be tested.” Chairing each committee was a division superintendent representing each Virginia’s eight Superintendent Regions. These eight superintendents were also members of the SSAC.¹¹⁸

On October 30, 1998, the Board of Education set passing scores for the SOL assessments in the four core subject areas. Designating minimum levels for “passing” and “advanced” performance, these scores largely reflected the recommended ranges of scores offered by the eight appointed Standard Setting Committees. The lone exceptions were found in the scores for the writing tests in grades five and eight, which were set to exceed the standards for passage of the Literacy Passport Test.¹¹⁹ Results of the first SOL test administration, released in January 1999, indicated that only 39 of Virginia’s 1800-plus schools would have achieved passing scores in all four core subject areas.¹²⁰ In February,

¹¹⁷*House Document No. 88, supra* note 58, at 18-19; 1996 Acts of Assembly, c. 912, § 1-51, Item 131 H; Virginia Department of Education, Press Release, “Board of Education Names Members of the Advisory Committee for Standards of Learning Tests,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/jun2398a.html>>.

¹¹⁸Virginia Department of Education, Press Release, “Virginia Board of Education Receives Passing Score Recommendations for SOL Tests” <<http://141.104.22.210/VDOE/NewHome/pressreleases/oct898.html>> (October 8, 1998).

¹¹⁹Virginia Department of Education, Press Release, “Virginia Board of Education Sets Passing Scores,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/oct3098.html>> (October 30, 1998).

¹²⁰Virginia Department of Education, Press Release, “Virginia Department Releases Results From First SOL Test Administration,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/jan899.html>> (January 8, 1999).

three university testing experts deemed that the SOL testing process and first administration “scored adequately in terms of validity and reliability.”¹²¹

Virginia Standards of Learning Assessments—Passing Scores

SOL Assessment	Pass--Proficient	Pass--Advanced
Grade 3		
English	32 of 45 items (71%)	42 of 45 items (93%)
Mathematics	36 of 50 items (72%)	45 of 50 items (90%)
History & Social Science	24 of 40 items (60%)	36 of 40 items (90%)
Science	27 of 40 items (68%)	36 of 40 items (90%)
Grade 5		
English: Reading, Literature, & Research	28 of 42 items (67%)	39 of 42 items (93%)
English: Writing	32 of 44 items (73%)	41 of 44 items (93%)
Mathematics	34 of 50 items (68%)	46 of 50 items (92%)
History & Social Science	26 of 40 items (65%)	37 of 40 items (93%)
Science	26 of 40 items (65%)	37 of 40 items (93%)
Computer/Technology	17 of 30 items (57%)	27 of 30 items (90%)
Grade 8		
English: Reading, Literature, & Research	27 of 42 items (64%)	37 of 42 items (88%)
English: Writing	30 of 44 items (68%)	41 of 44 items (93%)
Mathematics	37 of 60 items (62%)	55 of 60 items (92%)
History & Social Science	33 of 50 items (66%)	45 of 50 items (90%)
Science	29 of 50 items (58%)	45 of 50 items (90%)
Computer/Technology	26 of 40 items (65%)	36 of 40 items (90%)
High School		
English: Reading, Literature, & Research	24 of 42 items (57%)	37 of 42 items (88%)
English: Writing	37 of 54 items (69%)	49 of 54 items (91%)
Algebra I	27 of 50 items (54%)	45 of 50 items (90%)
Algebra II	31 of 50 items (62%)	45 of 50 items (90%)
Geometry	27 of 45 items (60%)	41 of 45 items (91%)
Earth Science	30 of 50 items (60%)	45 of 50 items (90%)
Biology	26 of 50 items (52%)	45 of 50 items (90%)
Chemistry	27 of 50 items (54%)	45 of 50 items (90%)
World History/to 1000 A.D. & World Geog.	33 of 61 items (54%)	55 of 61 items (90%)
World History/1000 A.D.--Present & World Geog.	36 of 63 items (56%)	57 of 63 items (90%)
U.S. History	40 of 61 items (66%)	55 of 61 items (90%)

Source: Virginia Department of Education, Press Release, “Virginia Board of Education Sets Passing Scores,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/oct3098.html>> (October 30, 1998).

¹²¹Virginia Department of Education, Press Release, “Outside Experts Conclude That First SOL Tests Score Adequately for Validity and Reliability,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/feb399.html>> (February 3, 1999).

Amendments to Standard 3 adopted in 1998 directed that the student outcome measures contemplated by the SOA include, but not be limited to, end-of-course or end-of-grade assessments, in accordance with the Standards of Learning, for English, mathematics, science, and social studies. An uncodified directive required the Board to develop and implement, as part of these SOL assessments, a separate “stand-alone” test for geography that is “not part of or paired with other end-of-course social studies assessments.”¹²² Over \$20 million in state general funds were included in the 1998-2000 biennial budget for the development and administration of “new assessment materials and tests related to the Standards of Learning.”¹²³

Assisting the Board in the improvement of the SOL Assessment initiative will be a 23-member Standards of Learning Assessment Program Advisory Committee, providing “ongoing review and recommendations,” and a panel of independent testing experts, offering advice on “all issues that involve the use of data and statistical procedures to confirm the tests’ validity and reliability as evaluation tools in measuring student achievement of the Standards of Learning.”¹²⁴ In July, 1999, the Board President announced the initial appointees, who are to serve three-year terms. Subsequent appointments are to be made by the full Board.¹²⁵

Qualifications of Professional Education Personnel

In addition to school and pupil performance standards, Standard 3 also focuses on the qualifications of school personnel. The Board of Education is required to establish requirements for the certification (now licensure) of teachers, principals, supervisors, and other professional staff. In addition, the Board is to determine eligibility requirements for the appointment of local division superintendents.¹²⁶

STANDARD 4: LITERACY PASSPORTS, DIPLOMAS, AND CERTIFICATES

Standard 4 sets forth the shared commitment of the General Assembly and the Board of Education to reduce illiteracy rates and to establish clear criteria for obtaining high school diplomas and certificates. In 1988, the General Assembly completely revised the Standards of Quality and added a Literacy Passport requirement to the standards for graduation. Recommended by the Governor's Commission on Excellence in Education, the Literacy Passport is designed to “affirm that the student is prepared for success at the more demanding

¹²²Va. Code § 22.1-253.13:3 B (1999 Supp.); 1998 Acts of Assembly, c. 567.

¹²³1998 Acts of Assembly, c. 464, § 1-52, Item 129 F.

¹²⁴Virginia Department of Education, Press Release, “Board of Education Establishes SOL Test Advisory Group and Outside Experts Panel,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/apr2899.html>> (April 28, 1999).

¹²⁵Virginia Department of Education, Press Release, “Board President Announces Members of Virginia Standards of Learning Test Advisory Committee,” <<http://141.104.22.210/VDOE/NewHome/pressreleases/jul0899.html>> (July 8, 1999).

¹²⁶Va. Code §§ 22.1-253.13:3 C; 22.1-298 (1999 Supp.).

level of secondary education."¹²⁷ Alluded to in Standard 3 as the "literacy tests in reading, writing, and mathematics" administered to sixth graders and to students who have not passed them in grades seven and eight, Literacy Passports are awarded to all students, including students with disabilities, achieving passing scores on three-part tests created by the Board of Education. School divisions are to make "reasonable accommodation" for students with disabilities taking the LPT.¹²⁸

That passage of the LPT—and mastery of the skills it measures—is critical is evidenced by the statute's encouragement of school divisions to "utilize the pre-test for fourth graders." Classification as a ninth grader is contingent upon passing the LPT. Two statutory exceptions are made—one, for disabled students identified as such pursuant to the Board's regulations governing special education (the Standards of Accreditation require these students to be "progressing according to the objectives of their individualized education program or 504 Plan")—and the other, for students for whom English is a second language who have been identified as having limited English proficiency and have been enrolled in a Virginia public school for less than three years. This latter group of students must achieve passing scores on the first literacy tests administered after three years of enrollment in Virginia public school to remain classified as ninth graders or above. Interestingly, the SOA do not include this second exception.

Students transferring from a school outside the Commonwealth prior to the ninth grade must also pass the LPT for promotion to the ninth grade. Students failing to pass the literacy tests (or all Standards of Learning assessments in grades three, five, and eight) must attend summer school or participate in some other form of remediation, as determined by the division superintendent. According to the SOA, students who do not obtain a Literacy Passport must be enrolled in an alternative program leading to passage of the LPT, high school graduation, a GED certificate, a certificate of program completion, or job-entry skills. To assist in the design of appropriate remediation programs, school boards are required to analyze their respective pass/fail rates and to "evaluate the needs" of students failing to obtain a Literacy Passport.¹²⁹

Those students who are not promoted or classified as ninth graders are reported as ungraded—a designation that not only affects academic placement but extracurricular activities as well. Virginia High School League (VHSL) regulations prohibit students who have not been classified as ninth graders from participating in VHSL-sponsored events, such as interscholastic varsity and junior varsity athletics, forensics, literary and dramatic competitions. The Board of Education affirmed this position in June 1992.¹³⁰ The LPT became an true "barrier" test in 1996, as passage of all three components was required that

¹²⁷ *Excellence in Education*, *supra* note 35, at 7.

¹²⁸ Va. Code § 22.1-253.13:4 A, B (1999 Supp.).

¹²⁹ Va. Code §§ 22.1-253.13:1; 22.1-253.13:4 A, B (1999 Supp.); 8 VAC 20-131-40 (1997).

¹³⁰ Virginia Department of Education, *Superintendent's Memo No. 1* (July 24, 1992), *Superintendent's Memo No. 2* (September 4, 1992).

year for students to receive a standard or advanced studies diploma (students who were sixth graders or lower in 1989-90).¹³¹

Previously offered in only the spring and fall, the Literacy Passport Test is now administered three times a year. In 1995, the Board of Education opted to provide an additional opportunity to take the LPT by offering a summer administration to ungraded students and those students who classified as grade six or above at the end of the preceding school year. An administration fee, not to exceed \$25, would support this special testing opportunity.¹³²

Pursuant to legislation adopted in 1998, the LPT will be phased out over an eight-year period. With the 1998 spring administration, LPT scores for sixth graders (class of 2004) would be used for informational or remediation purposes only; subsequent classification as a ninth grader or high school graduation would not be based on passage of the LPT. Students in the classes of 2003 and before would continue to be subject to the LPT requirement. After the 2004-2005 school year, the LPT will only be administered to adults and students returning to upgrade a certificate of completion or special diploma to a standard or advanced studies diploma.¹³³ Consistent with this phase-out, the Standards of Accreditation describe the Standards of Learning assessments as the “primary evaluation of student academic achievement for the purpose of these regulations.”¹³⁴

Literacy Passport Test Phase-Out Pursuant to 1998 Acts of Assembly, cc. 602, 627

Academic Year	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005/ ≡
Grade 6	✓*								
Grade 7	✓								
Grade 8	✓	✓							
Graded/Ungraded 9	✓	✓	✓						
Graded/Ungraded 10	✓	✓	✓	✓					
Graded/Ungraded 11	✓	✓	✓	✓	✓				
Graded/Ungraded 12	✓	✓	✓	✓	✓	✓	✓	✓	
Adults/Others**	✓	✓	✓	✓	✓	✓	✓	✓	✓

*Test results for informational and remediation purposes only; not used as a graduation requirement or for classification as a ninth grader.

**Adults and students returning to upgrade a certificate of completion or special diploma to a standard or advanced studies diploma.

By statute, diplomas are awarded to secondary school students, including students who transfer from nonpublic schools or from home instruction, earning the required credits prescribed by the Board, passing the prescribed tests, and meeting any additional local division

¹³¹Virginia Department of Education, *Superintendent's Memo No. 109* (June 7, 1996).

¹³²Virginia Department of Education, *Superintendent's Memo No. 51* (March 31, 1995), *Superintendent's Memo No. 68* (May 8, 1998).

¹³³1998 Acts of Assembly, cc. 602, 627 (HB 409; SB 120).

¹³⁴8 VAC 20-131-40 (1997); Virginia Department of Education, *Superintendent's Memo No. 195* (December 19, 1997), *Superintendent's Memo No. 68* (May 8, 1998).

requirements approved by the Board. Standard 4 dictates that school boards must provide for students who transfer between secondary schools or from nonpublic schools or home instruction, as detailed in the SOA.

While Standard 4 notes that the General Assembly and the Board establish criteria for diplomas and certificates, the details of these criteria, with a few exceptions, are determined by the Board in the Standards of Accreditation. A standard diploma necessitates the accumulation of a specified number of credits; an advanced studies diploma is awarded to those students completing the elective program that includes two additional credits. Special diplomas are awarded to students identified as disabled who complete their individualized education programs. Students completing a course of study prescribed by the local school board receive certificates if they do not qualify for a diploma. The Board of Education is to develop criteria for recognizing exemplary performance in vocational studies by students who have completed the requirements for a standard or advanced studies diploma and shall award seals on the diplomas of students meeting such criteria.¹³⁵

Limited statutory directives for diploma criteria can be found in Standard 3, which requires the standard and advanced studies diplomas to include one credit in fine, performing, or practical arts. In addition, the statute states that the requirements for a standard diploma may include a “concentration of courses selected from a variety of options.” These concentrations can be designed to ensure the completion of a “focused sequence” of courses that will assist in further education or in preparation for work, as developed by the local board consistent with Board guidelines. Effective July 1, 2003, the requirements for a standard diploma must also include “at least two sequential electives.” Finally, in determining credit and course requirements, the Board is to provide for “the selection of integrated learning courses meeting the Standards of Learning,” approved by the Board, which shall include SOL testing, as necessary.¹³⁶

Revisions to the Standards of Accreditation in 1997 introduced the concept of the “verified unit of credit” and altered diploma requirements, to be phased in beginning with the graduating classes of 2001-02 (ninth graders in 1998-99) and 2003-2004 (ninth graders in 2000-01). Beginning with the class of 2001-02, the number of credits for a standard diploma will increase from 21 to 22, and from 23 to 24 for an advanced studies diploma. The verified unit of credit is earned by completion of course instruction and the achievement of a passing score on the relevant end-of-course Standards of Learning test.¹³⁷

The primary differences between the standard and advanced studies diplomas effected by the 1997 revisions to the Standards of Accreditation are (i) the total number of required units of credit (22 for standard, 24 for advanced studies); (ii) the number of required verified units of credit (six for standard, nine for advanced studies); (iii) the additional one credit each in mathematics, laboratory science, and history and social sciences, and three credits in foreign language, offset in part by a reduction in the number of elective courses for the advanced

¹³⁵Va. Code §§ 22.1-253.13:3 B (effective July 1, 2003); 22.1-253.13:4 (1999 Supp.).

¹³⁶Va. Code § 22.1-253.13:3 B (1999 Supp.); 1999 Acts of Assembly, c. 1015 (HB 2477).

¹³⁷8 VAC 20-131-50; 8 VAC 20-131-110 (1997).

studies diploma; and (iv) for the advanced studies diploma, the requirement that students complete Algebra II.

Credit Requirements: Standard Diploma

Discipline Area	Units of Credit (Through 2000-01)	Units of Credit (Class of 2001-02)	Verified Units (Class of 2003-04/≡)
English	4	4	2
Mathematics*	2	3	1
Math or Science (choice)	1	--	--
Laboratory Science**	2	3	1
History/Social Sciences***	3	3	1
Health & Phys. Education	2	2	--
Fine Arts or Practical Arts	1	1	--
Electives	6	6	--
Student Selected Test	--	--	1
TOTAL	21	22	6

*Beginning with the Class of 2001-02, courses completed to satisfy this requirement shall be at or above the level of Algebra and shall include at least two course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra and Geometry. The Board of Education may approve additional courses to satisfy this requirement.

**Beginning with the Class of 2001-02, courses completed to satisfy this requirement shall include course selections at least two different science disciplines: Earth Sciences, Biology, Chemistry, or Physics. The Board of Education may approve additional courses to satisfy this requirement.

***Beginning with the Class of 2001-02, courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one World History/Geography course. Courses which satisfy the World History/Geography course are: (a) World History; (b) World Geography; (c) World History and Geography to 1000 A.D.; (d) World History and Geography 1000 A.D. to the Present; or (e) a semester course of World History to 1000 A.D. and a semester course of World Geography. The Board of Education may approve additional courses to satisfy this requirement.

Source: Virginia Department of Education, 8 VAC 20-131-50 A (1997).

Students completing the standard diploma and maintaining at least a B average in required courses may receive a Board of Education Seal on their diplomas; a Governor's Seal is affixed to the diplomas of students completing the advanced studies requirements with at least a B average and successfully completing at least one advanced placement (AP) course or one college-level course for credit. Local school boards may establish criteria for additional awards or seals for exceptional pupil performance.¹³⁸

¹³⁸8 VAC 20-131-50 D (1997).

Credit Requirements: Advanced Studies Diploma

Discipline Area	Units of Credit (Through 2000-01)	Units of Credit (Class of 2001-02)	Verified Units (Class of 2003-04/≡)
English	4	4	2
Mathematics*	3	4	2
Laboratory Science**	3	4	2
History/Social Sciences***	3	4	2
Foreign Language****	3	3	--
Health & Phys. Education	2	2	--
Fine Arts or Practical Arts	1	1	--
Electives	4	2	--
Student Selected Test	--	--	1
TOTAL	23	24	9

* Beginning with the Class of 2001-02, courses completed to satisfy this requirement shall be at or above the level of Algebra and shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The Board of Education may approve additional courses to satisfy this requirement.

**Beginning with the Class of 2001-02, courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: Earth Sciences, Biology, Chemistry, or Physics. The Board of Education may approve additional courses to satisfy this requirement.

***Beginning with the Class of 2001-02, courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two World History/Geography courses. Acceptable courses to satisfy the World History/Geography requirements include: (a) World History, and World Geography; (b) World History and Geography to 1000 A.D., and World History and Geography from 1000 A.D. to the Present; or (c) a semester course of World Geography, a semester course of World History to 1000 A.D., and a year-long course of World History 1000 A.D. to the Present. The Board of Education may approve additional courses to satisfy this requirement.

****Three years of one language or two years of two languages.

Source: Virginia Department of Education, 8 VAC 20-131-50 B (1997).

STANDARD 5: TRAINING AND PROFESSIONAL DEVELOPMENT

Recognizing that "programs of professional development and training and appropriate teacher performance evaluations are essential for effective educational leadership and personnel and the advancement of public education," Standard 5 details requirements for training for teachers, administrators, and other school staff as well as members of the Board of Education and local school boards. Members of the Board of Education must attend in-service programs on personnel, curriculum, and current education issues. The Board must sponsor or provide advice on programs for local school board members, teachers (including, in cooperation with the Virginia Department for the Visually Handicapped, in-service training in Braille for teachers of the blind and visually impaired), administrators, division superintendents, and others.

Local school boards must, in turn, require their members and division superintendents to participate in annual development programs and activities. School boards must also

provide a professional development program, as part of the license renewal process, to assist teachers and principals in gaining the skills necessary to work with gifted and disabled pupils and to increase student achievement. Local school boards must also address the continuing development of administrative personnel by providing programs "designed to increase instructional leadership and management." Finally, local boards must provide a program of professional development in educational technology for all instructional personnel. The State Board is to provide technical assistance to "seek to ensure that all instructional personnel are proficient in the use of educational technology consistent with its Six-Year Technology Plan for Virginia."¹³⁹

Virginia's commitment to continuing training and development activities for educators is also mirrored in the Standards of Accreditation. Cited by these regulations as the individual responsible for instructional leadership and "effective school management," the school principal is to involve staff in "identifying the types of staff development needed to improve student achievement" and is to "ensure that staff participate in those activities...."¹⁴⁰ Each school is to adopt goals and consisting of "measurable objectives" designed, among other things, to "increase the quality of instruction through professional staff development and licensure."¹⁴¹

Upon the recommendation of the HJR 196 Commission on the Future of Public Education and recognizing that "leadership is essential for the advancement of public education in the Commonwealth," the 1998 Session of the General Assembly amended Standard 5 to direct the Board to "develop leadership standards for superintendents and principals." Creating a two-year training initiative for division superintendents, principals, and teachers to support and facilitate "the implementation of the Standards of Learning and, thereby, achievement of the requirements of the Standards of Accreditation," the Legislature also enacted amendments contemplating the use of teacher leader trainers and lead-teacher programs by school divisions.¹⁴²

Building on these leadership and training initiatives, the 1999 Session adopted legislation directing the Board to specifically include within the leadership standards for superintendents and principals training in the implementation of the SOL and in the "evaluation and documentation of teacher and administrator performance based on student academic progress and the skills and knowledge of instructional personnel."¹⁴³ The Board is to sponsor or provide advice on training administrators and supervisory personnel in these evaluation and documentation skills.¹⁴⁴

¹³⁹Va. Code § 22.1-253.13:5 (1999 Supp.).

¹⁴⁰8 VAC 20-131-210 B (3)(b), (c) (1997).

¹⁴¹8 VAC 20-131-20 C (1997).

¹⁴²Va. Code § 22.1-253.13:5 (1999 Supp.); 1998 Acts of Assembly, c. 826.

¹⁴³Va. Code § 22.1-253.13:5 C (1999 Supp.); 1999 Acts of Assembly, cc. 1030; 1037.

¹⁴⁴Va. Code § 22.1-253.13:5 D (1999 Supp.); 1999 Acts of Assembly, cc. 1030; 1037.

STANDARD 6: PLANNING AND PUBLIC INVOLVEMENT

Described as "essential" to providing high quality education, planning and community involvement are the chief focus of Standard 6. A statewide six-year improvement plan, revised and adopted biennially by the Board of Education with public participation, must detail educational objectives for Virginia, an assessment of progress made toward these objectives, projected enrollments, and a determination of education needs. Copies of this "blueprint" for public education must be available for public inspection and copying. Analysis of the achievement of the Standards of Quality as well as the objectives of this six-year plan must be included in the Board's annual report to the Governor and the General Assembly on the condition and needs of public education required by § 22.1-18. The Board to include, in its six-year plan, a "detailed six-year plan to make educational technology an integral part of public school education"; the Board is to review and approve this plan and may require revisions "as it deems necessary."¹⁴⁵ The Board's Six-Year Educational Technology Plan for Virginia (1996-2002) addresses "equity of educational opportunities for all students, and connections through resources such as the Internet, public libraries, industries, and commercial vendors to improve educational programs." The Plan encompasses not only the effective use of technology in education, but also teacher training, program evaluation, and funding.¹⁴⁶

Supporting the statewide improvement plan are local, divisionwide six-year plans, also developed and revised biennially with public input. At least one public hearing must be held prior to the adoption of this plan. Biennial plans prepared by individual schools are granted consideration in the development of the divisionwide plan.

Like its statewide counterpart, the divisionwide plan also includes educational objectives and an assessment of progress. The plan must also address enrollment changes, consolidations, the regional delivery of services, and technology. By November 1 of each odd-numbered year, school boards must publicly present a progress report on the achievement of educational objectives in the divisionwide plan. The Standards of Accreditation bolster this state and local planning requirement, directing each school to "promote interaction with the community and foster mutual understanding in providing a quality educational program" through involving parents, citizens, community agencies, and the private sector in the development of the biennial school plan.¹⁴⁷

¹⁴⁵Va. Code § 22.1-253.13:6 (1999 Supp.).

¹⁴⁶Virginia Department of Education, Division of Technology, *An Implementation Plan for the Six-Year Educational Technology Plan for Virginia (1996-2002)*, <<http://141.104.22.210/VDOE/Technology/ImPlanIntro.html>>.

¹⁴⁷Va. Code § 22.1-253.13:6 (1999 Supp.). The individual school biennial plans are also cited in the Standards of Accreditation. 8 VAC 20-131-20; 8 VAC 20-131-210; 8 VAC 20-131-270; 8 VAC 20-131-290 (1997).

STANDARD 7: POLICY MANUAL

The seventh and final Standard of Quality addresses the policies and regulations governing the operation of local school divisions. The Board of Education must make available to local school boards copies of current state education laws, Board regulations, and pertinent opinions of the Attorney General. Each local school division is required to maintain its own policy manual, which must include copies of the Virginia Code sections governing teacher grievances, dismissals, and suspensions, and the implementation mechanisms for these provisions, as well as a "cooperatively developed" personnel evaluation procedure.

The local school division policy manual should also contain a system facilitating communication between employees and the local school board; a policy for the selection of instructional materials and "clear procedures for handling challenged controversial materials"; student attendance and conduct standards, including enforcement procedures to provide an educational atmosphere free from disruption and supportive of individual rights; a policy for community involvement; and guidelines encouraging parents to provide instructional assistance to their youngsters, which may include training for parents of children in grades K through 3.

Reviewed every five years and revised as necessary, the local school board policy manual must be kept in each school library and public library. Annual announcements in each division are to apprise the public of the availability of this manual.¹⁴⁸

ENFORCEMENT OF THE STANDARDS OF QUALITY

Section 22.1-253.13:8 of the Code of Virginia makes explicit that the statutorily prescribed Standards are "the only standards of quality" required by the Constitution and clarifies that these Standards are not a goal but the minimum commitment required of each school division. Compliance with the Standards of Quality is determined by the Board of Education, which must report school divisions identified as failing or refusing to comply with the Standards to the Attorney General. It is the Attorney General's duty to file, on behalf of the Board of Education, a petition for a writ of mandamus in the appropriate circuit court to compel compliance with the Standards.¹⁴⁹

¹⁴⁸Va. Code § 22.1-253.13:7 (1997).

¹⁴⁹Va. Code § 22.1-253.13:8 (1997).

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SIGNIFICANT EVENTS IN THE DEVELOPMENT OF PUBLIC SCHOOLS IN VIRGINIA

- 1643** First "free" school established in Elizabeth City County.
- 1779** Jefferson's "Bill for the More General Diffusion of Knowledge," establishing free public schools, fails; a similar measure, leaving public schools to local initiative, passes in 1796.
- 1810** Literary Fund established.
- 1851** Virginia Constitution permits application of capitation tax to "primary and free schools."
- 1870** Virginia Constitution requires Superintendent of Public Instruction to develop plan for public school system.
- 1902** General Assembly constitutionally required to "establish and maintain an efficient system of public free schools."
- 1907** Board of Education prescribes course of study for elementary schools.
- 1913** High school accreditation program established.
- 1922** First compulsory attendance laws passed.
- 1945** Board of Education regulations on 12-year public school system adopted.
- 1954** U.S. Supreme Court decision in *Brown v. Board of Education* eliminates "separate but equal" doctrine.
- 1960** Spong Commission examines Virginia public school system.
- 1963** *Griffin v. County Bd. of Supervisors* requires mandates re-opening of Prince Edward County schools.
- 1966** Designation of sales tax revenues for public education.
- 1971** New Virginia Constitution mandates public schools of "high quality" and requires development of Standards of Quality; first Standards enacted in 1972.
- 1984** Standards of Quality codified in Title 22.1 of the Code of Virginia; Governor's Commission on Virginia's Future recommends equal access to appropriate education.
- 1986** Governor's Commission on Excellence in Education recommends strengthening public schools.
- 1990** Commission on Educational Opportunity for All Virginians established pursuant to Executive Order No. 4.
- 1991** Coalition for Equity in Educational Funding files suit against Commonwealth, *et al.*; Commonwealth's demurrer sustained in late 1992.
- 1992** Draft of "Common Core of Learning" released as part of proposed World Class Education program; withdrawn in September 1993.
- 1994** Virginia Supreme Court finds that Article VIII does not require "substantial equality" in spending or programs among public schools in *Scott v. Commonwealth*; federal *Goals 2000* signed into law.
- 1995** Revised Standards of Learning for Mathematics, English, Science, and History/Social Studies adopted.
- 1996** Governor's Commission on Champion Schools Report issued; Commission on the Future of Public Education created (HJR 196).
- 1997** Initial administration of new SOL assessments for four core subjects; revised Standards of Accreditation adopted in September.

1998 Charter schools legislation enacted; HJR 196 Commission on the Future of Public Education issues final report, “Blueprint for Excellence” (HD 48); passing and advanced scores for SOL assessments in four core subjects.